

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1978

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C-641

FOREWORD

This volume contains the Acts of the Second Regular Session of the 63rd Legislature.

Regular Session, 1978

The second regular session of the 63rd Legislature convened on January 11, 1978. The constitutional 60-day limit on the duration of the session being midnight on March 11, 1978, however, by concurrent resolution the Legislature was extended until March 14, 1978, and sine die adjournment came on March 13, 1978.

Bills totaling 1,573 were introduced in the two houses during the session (1041 House and 532 Senate). The Legislature passed 117 bills, 54 House and 63 Senate. The Governor approved 112 bills and vetoed five. However, one bill disapproved was repassed, notwithstanding the Governor's objections, leaving a net total of four bills lost through veto.

There were 87 concurrent resolutions during the session, 54 House and 33 Senate, of which nine House and six Senate were adopted. Thirty-eight House Joint and 16 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted one Senate Joint Resolution—S.J.R. 4, proposing an amendment to the Constitution of the State designated the "School Levy and Bond Amendment." The House had 33 House Resolutions and the Senate had 21 Senate Resolutions, of which 15 House and 18 Senate were adopted.

The Senate failed to pass 68 House bills passed by the House and 71 Senate bills failed passage by the House. One House bill and one Senate bill died in conference. The House rejected the report of the Committee of Conference on one House bill. The House of Delegates refused to concur in the Senate amendments on one House bill.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the code of West Virginia. These acts may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia 25305.

C. A. BLANKENSHIP, *Clerk*
House of Delegates.

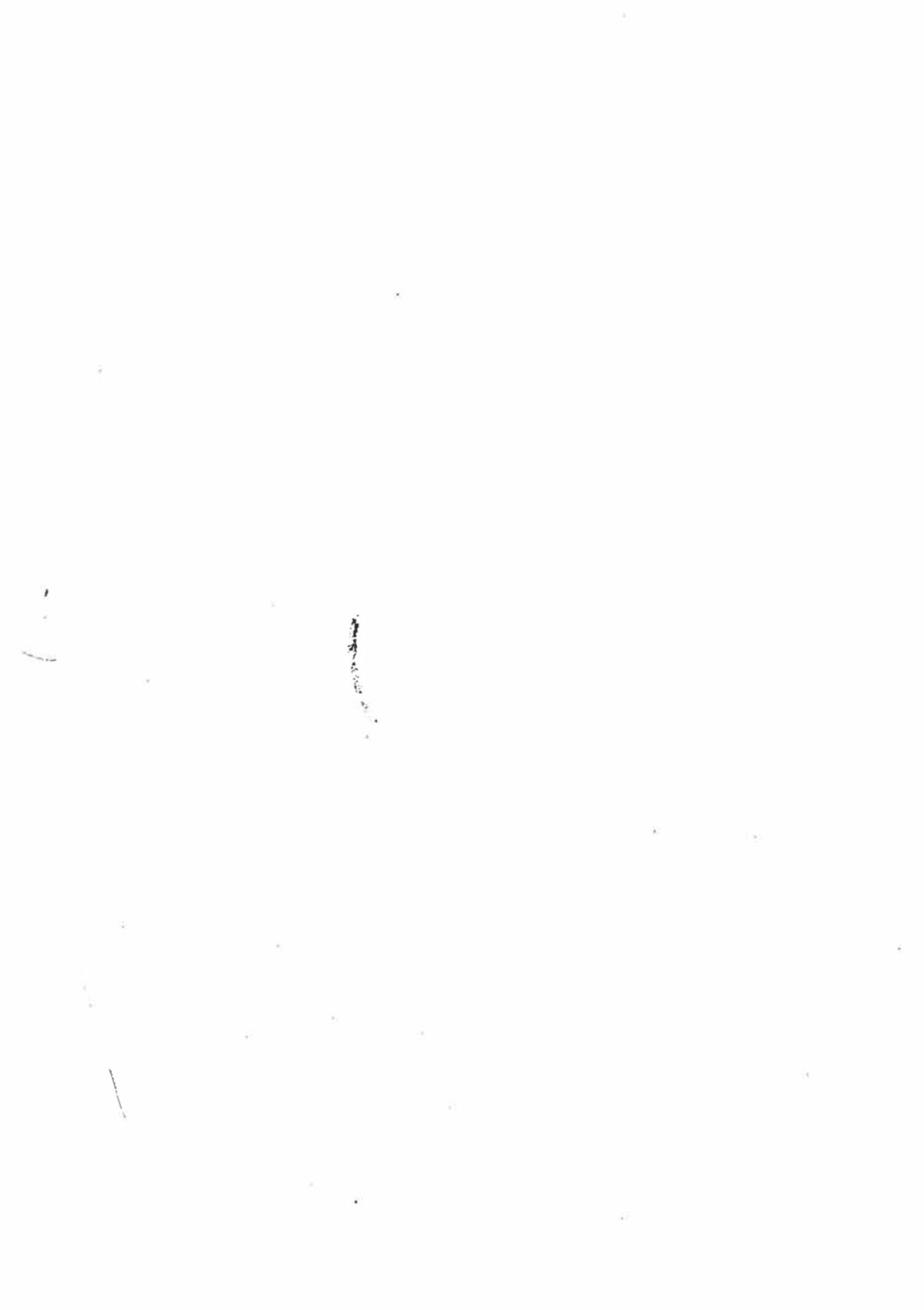


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Regular Session, 1978

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1978

OFFICERS

Speaker—Donald L. Kopp, Clarksburg

Clerk—C. A. Blankenship, Pineville

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

Doorkeeper—Dannie Wingo, Yukon

District	Name	Address
First	Gust G. Brenda, Jr. (D)	Weirton
	George P. Gvoyich (D)	Weirton
Second	Charles Donley (D)	Wellsburg
	Pamela Sue Shuman (D)	Wellsburg
Third	Mrs. Thais Blatnik (D)	Triadelphia
	John M. Karras (D)	Wheeling
	Paul J. Otte (R)	Wheeling
	Jerry A. Tighe (D)	Wheeling
Fourth	Albert D. Yanni (D)	Glen Dale
	Larry Wiedebusch (D)	Glen Dale
Fifth	Joseph M. Ballouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	Salem
Seventh	Sam White (R)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	Stephen C. Bird (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	M. E. Mowery (D)	Parkersburg
	Donza T. Worden (D)	Parkersburg
Ninth	Corlis W. Harris (D)	Spencer
Tenth	Charles H. Damron (D)	Fraziers Bottom
	John E. Fitzgerald (D)	Ravenswood
	Dave O'Neal (D)	Pt. Pleasant
	Dan Shumate (D)	Ravenswood
Eleventh	Michele P. Craig (D)	Huntington
	Albert C. Esposito (R)	Huntington
	Patricia O. Hartman (D)	Huntington
	Hugh A. Kincaid (D)	Huntington
	Dorsey Ketchum (D)	Huntington
	Charles M. P. lan, Jr. (D)	Huntington
Twelfth	Burnie R. Crabtree (D)	Genoa
	Fox Fry (D)	Wayne
Thirteenth	James E. Blevins (D)	Delbarton
	R. D. yle Van Meter (D)	Williamson
Fourteenth	Ernest C. Moore (D)	Thorpe
	T. J. Scott (D)	Welch
	Lacy Wright, Jr. (D)	Brndshaw
Fifteenth	Frank L. Blackwell (D)	Mullens
	Thomas G. Goodwin (D)	Seth
	Troy W. Hendricks (D)	Madison
Sixteenth	Sammy D. Dalton (D)	Harts
	Charles Gilliam (D)	Logan
	Thomas W. Mathis (D)	Logan
	Earl Ray Tomblin (D)	Chapmanville
Seventeenth	John Boettner, Jr. (D)	Charleston
	William L. Dodd, Jr. (D)	Charleston
	J. Edward Hafer, Jr. (D)	Elkview
	Darrell E. Holmes (D)	Charleston
	Harry L. Newell (D)	St. Albans
	Helaine Rotgin (D)	Charleston
	Lyle Sattes (D)	Charleston
C. Rudolph Seacrist (D)	Belle	

¹ J. Edward Hafer, Jr., appointed August 31, 1977, to fill the vacancy created by the resignation of the Honorable Leon T. Copeland.

² Harry L. Newell appointed June 17, 1977, to fill the vacancy created by the resignation of the Honorable Jack Canfield.

³ C. Rudolph Seacrist appointed July 25, 1977, to fill the vacancy created by the death of the Honorable E. M. Johnson.

HOUSE OF DELEGATES

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District	Name	Address
	Walter Shepherd (D)	Sissonville
	John T. Slack (D)	Charleston
	Larry Sonis (D)	Charleston
	Roger W. Tompkins (D)	Charleston
	Martha G. Wehle (D)	Charleston
Eighteenth	Sterling T. Lewis (D)	Shady Spring
	Ted T. Stacy (D)	Beckley
	Mrs. W. W. Withrow (D)	Beckley
	William R. Wooton (D)	Beckley
Nineteenth	¹ Donald F. Anello (D)	Bramwell
	C. C. Christian, Jr. (D)	Princeton
	James W. McNeely (D)	Bluefield
	W. Marion Shiflet (D)	Union
	Tony E. Whitlow (D)	Princeton
Twentieth	Betty D. Crookshanks (D)	Rupert
	Sarah L. Neal (D)	Rainelle
Twenty-first	Carroll E. Bumgarner (D)	Oak Hill
	Paul W. McKown (D)	Fayetteville
	Adam Toney (D)	Oak Hill
Twenty-second	Larry A. Tucker (D)	Summersville
	² Robert L. Ward (D)	C. wen
Twenty-third	Billy B. Burke (D)	Glenville
	Harold V. Long (D)	Little Birch
Twenty-fourth	George E. Arnold (D)	Weston
Twenty-fifth	Gino R. Colombo (D)	Nutter Fort
	Michael D. Greer (R)	Salsm
	Donald L. Kopp (D)	Clarksburg
	James Laulis (D)	Bridgeport
Twenty-sixth	Samuel A. Morasco (D)	Grafton
	Paul E. Prunty (R)	Fairmont
	William E. Shingleton (D)	Fairmont
	Cody A. Starcher (D)	Fairmont
Twenty-seventh	Ralph Brown (D)	Arthurdale
	Clyde W. Hagedorn (D)	Morgantown
	Clyde H. Richey (D)	Morgantown
	Larry E. Schifano (D)	Morgantown
Twenty-eighth	James W. Teets (R)	Terra Alta
Twenty-ninth	E. E. Bryan (D)	Philippi
	Charles R. Shaffer (R)	Buckhannon
Thirtieth	Julia Pitsenberger (D)	Elkins
	Jae Spears (D)	Elkins
Thirty-first	Clyde M. See, Jr. (D)	Moorefield
Thirty-second	Guy Ross Smith (D)	Davis
Thirty-third	Robert D. Harman (R)	Keyser
Thirty-fourth	William T. Milleson (D)	Springfield
Thirty-fifth	Joseph E. Caudle (D)	Martinsburg
	Terry T. Harden (D)	Berkeley Springs
	Clarence E. Martin, III (D)	Martinsburg
Thirty-sixth	³ Bianca M. James (D)	Charles Town

¹ Donald F. Anello appointed January 3, 1978, to fill the vacancy created by the resignation of the Honorable Charles E. Lohr.

² Robert L. Ward appointed December 11, 1977, to fill the vacancy created by the resignation of the Honorable D. Boyd Dotson.

³ Bianca M. James appointed October 11, 1977, to fill the vacancy created by the resignation of the Honorable Carolyn M. Snyder.

(D) Democrats	91
(R) Republicans	9
Total	<u>100</u>

MEMBERS OF THE SENATE

REGULAR SESSION, 1978

OFFICERS

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

Clerk—J. C. Dillon, Jr., Hinton

Sergeant at Arms—John E. Howell, Charleston

Doorkeeper—E. L. Bevins, Williamson

District	Name	Address
First	*Judith A. Herndon (R)	Wheeling
	Samuel N. Kusic (R)	Weirton
Second	*William L. Gilligan (R)	Sistersville
	Dan R. Tonkovich (D)	Benwood
Third	*Russell G. Beall (D)	Parkersburg
	David G. Hanlon (D)	Harrisville
Fourth	*Robert F. Hatfield (D)	Hurricane
	Orton A. Jones (R)	Spencer
Fifth	*Robert R. Nelson (D)	Huntington
	Walter Rollins (D)	Kenova
Sixth	John Pat Fanning (D)	Jaeger
	*Lafe P. Ward (D)	Williamson
Seventh	J. Ned Grubb (D)	Man
	*J. Robert Rogers (D)	Madison
Eighth	Marlo J. Palumbo (D)	Charleston
	*Roland Savilla (D)	St. Albans
Ninth	Warren R. McGraw (D)	Pineville
	*Alan L. Susman (D)	Beckley
Tenth	†Richard P. Baylor (D)	Hinton
	Odell H. Huffman (D)	Princeton
Eleventh	Pat R. Hamilton (D)	Oak Hill
	*Ralph D. Williams (D)	Rainelle
Twelfth	Richard Benson (D)	Elkins
	*Carl E. Gainer (D)	Richwood
Thirteenth	*W. Walter Neeley (D)	Clarksburg
	Wm. R. Sharpe, Jr. (D)	Weston
Fourteenth	James L. Davis (D)	Fairmont
	*William A. Moreland (D)	Morgantown
Fifteenth	*C. N. Harman (R)	Grafton
	J. D. Hinkle, Jr. (R)	Buckhannon
Sixteenth	William J. Oates, Jr. (D)	Romney
	*Robert M. Steptoe (D)	Martinsburg
Seventeenth	W. T. Brotherton, Jr. (D)	Charleston
	*Si Galperin, Jr. (D)	Charleston

† Elected in 1976 for unexpired term.

* Elected in 1974. All others elected in 1976.

(D) Democrats	28
(R) Republicans	6
Total	34

STANDING COMMITTEES OF THE HOUSE OF DELEGATES

1978

Agriculture and Natural Resources

Ballouz (Chairman), Neal (Vice Chairman), Arnold, Blevins, Brenda, Brown, Bryan, Burke, Crookshanks, Fry, Goodwin, Harden, Harris, McKown, McNeely, Milleson, O'Neal, Richey, Rotgin, Shiflet, Smith, Whitlow, Worden, Shaffer and Swann.

Banking and Insurance

Shingleton (Chairman of Banking), Morasco (Chairman of Insurance), Bryan (Vice Chairman of Banking), Stacy (Vice Chairman of Insurance), Bird, Donley, Fry, Hartman, Holmes, McKown, Milleson, Mowery, Newell, Pitsenberger, Sattes, Schifano, Scott, Shepherd, Shiflet, Shumate, Tucker, Ward, Wright, Esposito and Shaffer.

Constitutional Revision

Wehrle (Chairman), Sattes (Vice Chairman), Ballouz, Caudle, Colombo, Craig, Dalton, Damron, Donley, Hafer, Ketchum, Mathis, Moore, Mowery, Neal, Schifano, Sonis, Spears, Tucker, Wooton, Wright, Harman and White.

Education

Albright (Chairman), Bumgarner (Vice Chairman), Ballouz, Blackwell, Blatnik, Blevins, Crookshanks, Dalton, Goodwin, Hafer, Hagedorn, Harris, Hartman, Ketchum Lewis, Martin, McNeely, Newell, Richey, Rotgin, Starcher, Wright, Yanni, Harman and Prunty.

Finance

Polan (Chairman), Farley (Vice Chairman), Boettner, Brenda, Brown, Colombo, Crabtree, Fitzgerald, Harden, Holmes, Karras, Kincaid, Long, Mathis, Milleson, Morasco, Neal, O'Neal, Spears, Tomblin, Toney, Van Meter, Withrow, Swann and Teets.

Government Organization

Shuman (Chairman), McKown (Vice Chairman), Anello, Bird, Blatnik, Burke, Dodd, Fry, Gvovych, Hendricks, Laulis, Schifano, Seacrist, Shiflet, Shumate, Slack, Sonis, Tighe, Whitlow, Wiedebusch, Worden, Wright, Greer and Otte.

HOUSE COMMITTEES

Health and Welfare

Withrow (Chairman), Fitzgerald (Vice Chairman), Arnold, Bird, Blevins, Boettner, Bumgarner, Caudle, Dodd, Gvoyich, Hagedorn, Harden, Ketchum, Laulis, Lewis, Rotgin, Smith, Spears, Tighe, Tomblin, Ward, Wehrle, Worden, Esposito and Otte.

Industry and Labor

Wiedebusch (Chairman), Moore (Vice Chairman), Blackwell, Bumgarner, Christian, Crabtree, Crookshanks, Dodd, Fry, Gilliam, Gvoyich, Hagedorn, Harris, Holmes, Karras, Long, Richey, Seacrist, Shepherd, Sonis, Starcher, Whitlow, Yanni, Greer and Prunty.

Interstate Cooperation

Shiflet (Chairman), Christian, Donley, Gilliam, Scott, Withrow and Swann. (Speaker is ex officio nonvoting member.)

Judiciary

Tompkins (Chairman), Tucker (Vice Chairman), Albright, Bryan, Caudle, Christian, Craig, Damron, Donley, Gilliam, Laulis, Martin, Moore, Mowery, Pitsenberger, Sattes, Scott, See, Shepherd, Shingleton, Stacy, Wehrle, Wooton, Shaffer and White.

Political Subdivisions

Damron (Chairman), Toney (Vice Chairman), Anello, Boettner, Brown, Gvoyich, Hendricks, James, Ketchum, Kincaid, Lewis, Martin, Mathis, McNeely, Mowery, O'Neal, Pitsenberger, Shepherd, Shuman, Sonis, Van Meter, Wiedebusch, Wooton, Greer and Otte.

Roads and Transportation

Goodwin (Chairman), Long (Vice Chairman), Arnold, Blackwell, Blatnik, Burke, Christian, Crabtree, Craig, Dalton, Farley, Fitzgerald, Hendricks, James, Laulis, Shumate, Slack, Smith, Stacy, Starcher, Tomblin, Toney, Yanni, Harman and Swann.

Rules

Kopp (Chairman, ex officio), Albright, Brenda, Colombo, Damron, Mathis, Polan, See, Shiflet, Tompkins, Tucker and Teets.

State and Federal Affairs

Scott (Chairman), Van Meter (Vice Chairman), Brenda, Caudle, Colombo, Crabtree, Dalton, Gilliam, Hartman, Holmes, James, Karras, Kincaid, Morasco, Neal, Newell, Shepherd, Shingleton, Smith, Spears, Tighe, Tomblin, Withrow, Prunty and White.

HOUSE COMMITTEES

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JOINT COMMITTEES

Enrolled Bills

Christian (Chairman), Holmes, Spears, Esposito and Prunty.

Government and Finance

Kopp (Chairman), Albright, Polan, See, Tompkins, Greer and Teets.

Joint Rules

Kopp (Chairman ex officio), See and Teets.

Legislative Rule-Making Review Committee

Shingleton (Chairman), Bryan, Shiflet Wiedebusch, Shaffer and Teets. (Speaker is ex officio nonvoting member.)

**PURCHASING PRACTICES AND PROCEDURES
COMMISSION**

Kopp (Chairman), Moore, Sattes, Harman and Teets.

STANDING COMMITTEES OF THE SENATE

1978

Agriculture

Beall (Chairman), Williams (Vice Chairman), Benson, Hamilton, Hanlon, Hatfield, Oates, Steptoe, Susman, Gilligan and Jones.

Banking and Insurance

Neeley (Chairman), Rogers (Vice Chairman), Baylor, Benson, Hamilton, Huffman, Moreland, Rollins, Susman, Ward, Williams, Herndon and Kusic.

Confirmations

Benson (Chairman), Galperin (Vice Chairman), Davis, Hamilton, McGraw, Neeley, Oates, Rogers, Savilla, Tonkovich, Gilligan, Harman and Herndon.

Education

Nelson (Chairman), Oates (Vice Chairman), Beall, Benson, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Savilla, Sharpe, Gilligan, Herndon and Jones.

Elections

Oates (Chairman), Nelson (Vice Chairman), Galperin, Hamilton, Huffman, McGraw, Moreland, Palumbo, Steptoe, Gilligan and Herndon.

Energy, Industry and Mining

Susman (Chairman), Rogers (Vice Chairman), Baylor, Beall, Benson, Gainer, Grubb, Hamilton, Williams, Hinkle and Kusic.

Finance

Fanning (Chairman), Susman (Vice Chairman), Beall, Gainer, Grubb, Hanlon, Hatfield, McGraw, Neeley, Rollins, Savilla, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harman and Hinkle.

Health

Huffman (Chairman), Hatfield (Vice Chairman), Davis, Galperin, Hamilton, Hanlon, Moreland, Sharpe, Tonkovich, Harman and Jones.

Interstate Cooperation

Gainer (Chairman), Neeley (Vice Chairman), Davis, Moreland, Nelson, Oates and Hinkle. (President is ex officio nonvoting member)

Judiciary

Palumbo (Chairman), Oates (Vice Chairman), Baylor, Benson, Davis, Gainer, Galperin, Hamilton, Huffman, Moreland, Neeley, Nelson, Rogers, Rollins, Ward, Herndon, Jones and Kusic.

Labor

Hatfield (Chairman), Davis (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Ward, Gilligan and Harman.

Local Government

Galperin (Chairman), Moreland (Vice Chairman), Beall, Benson, Hanlon, Huffman, Steptoe, Herndon and Hinkle.

Military

Moreland (Chairman), Savilla (Vice Chairman), Baylor, Hatfield, McGraw, Neeley, Williams, Harman and Hinkle.

Natural Resources

Gainer (Chairman), Rogers (Vice Chairman), Baylor, Beall, Benson, Galperin, Grubb, McGraw, Oates, Palumbo, Rollins, Steptoe, Susman, Harman and Hinkle.

Public Institutions

Sharpe (Chairman), Hatfield (Vice Chairman), Davis, Hamilton, Nelson, Rollins, Savilla, Gilligan, Harman and Hinkle.

Rules

Brotherton (Chairman ex officio), Fanning, Gainer, Nelson, Palumbo, Sharpe, Susman, Ward, Jones and Kusic.

Transportation

Steptoe (Chairman), Davis (Vice Chairman), Beall, Gainer, Hamilton, Hatfield, Huffman, Neeley, Nelson, Palumbo, Savilla, Sharpe, Tonkovich, Williams, Gilligan, Herndon and Jones.

SENATE COMMITTEES

JOINT COMMITTEES

Enrolled Bills

Davis (Chairman), Beall, Rogers, Hinkle and Jones.

Government and Finance

Brotherton (Chairman), Fanning, Palumbo, Sharpe, Ward, Harman and Kusic.

Joint Rules

Brotherton (Chairman ex officio), Ward and Kusic.

Legislative Rule-Making Review Committee

Stephoe (Chairman), Moreland, Rollins, Susman, Herndon and Hinkle. (President is ex officio nonvoting member)

**PURCHASING PRACTICES AND PROCEDURES
COMMISSION**

Brotherton (Chairman), Beall, Nelson, Harman and Jones.

LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1978

CHAPTER 1

(Com. Sub. for H. B. 932—By Mr. Satter and Mr. Albright)

[Passed March 9, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article three, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section thirty-three, all relating to the enactment of an additional "long-arm" statute; providing that the engaging by a non-resident or his duly authorized agent in any one or more of certain specified acts in this state shall be deemed equivalent to the appointment by such nonresident of the secretary of state to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding for a cause of action arising from or giving out of any one or more of specified acts; requiring a bond to be furnished; establishing requirements for the service of process; relating to continuances; relating to fees, the disposition thereof and records with respect thereto; defining words and phrases; providing that provisions are cumulative; and specifying that the section shall not be considered as retroactive.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article three, chapter fifty-six 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 thirty-three, all to read as follows:

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-25. Failure to appear in response to publication; trial or hearing.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

§56-3-25. Failure to appear in response to publication; trial or hearing.

1 When such order shall have been so published, if the
2 defendants against whom it is entered, or the known parties,
3 shall not appear within the time specified in such order, the
4 case may be tried or heard as to them at the next term of the
5 court commencing not less than one month after the date of
6 the first publication. Upon any trial or hearing under this
7 section, such judgment, decree or order shall be entered as
8 may appear just.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

1 (a) The engaging by a nonresident, or by his duly autho-
2 rized agent, in any one or more of the acts specified in
3 subdivisions (1) through (7) of this subsection, shall be
4 deemed equivalent to an appointment by such nonresident of
5 the secretary of state, or his successor in office, to be
6 his true and lawful attorney upon whom may be served all
7 lawful process in any action or proceeding against him, in
8 any circuit court in this state, including an action or
9 proceeding brought by a nonresident plaintiff or plaintiffs,
10 for a cause of action arising from or growing out of such
11 act or acts, and the engaging in such act or acts shall be a
12 signification of such nonresident's agreement that any such
13 process against him, which is served in the manner hereinafter
14 after provided, shall be of the same legal force and validity
15 as though such nonresident were personally served with a
16 summons and complaint within this state:

17 (1) Transacting any business in this state;

18 (2) Contracting to supply services or things in this state;

19 (3) Causing tortious injury by an act or omission in this
20 state;

21 (4) Causing tortious injury in this state by an act or
22 omission outside this state if he regularly does or solicits
23 business, or engages in any other persistent course of con-
24 duct, or derives substantial revenue from goods used or
25 consumed or services rendered in this state;

26 (5) Causing injury in this state to any person by breach
27 of warranty expressly or impliedly made in the sale of goods
28 outside this state when he might reasonably have expected
29 such person to use, consume or be affected by the goods in
30 this state: *Provided*, That he also regularly does or solicits
31 business, or engages in any other persistent course of conduct,
32 or derived substantial revenue from goods used or consumed
33 or services rendered in this state;

34 (6) Having an interest in, using or possessing real property
35 in this state; or

36 (7) Contracting to insure any person, property or risk
37 located within this state at the time of contracting.

38 (b) When jurisdiction over a nonresident is based solely
39 upon the provisions of this section, only a cause of action
40 arising from or growing out of one or more of the acts
41 specified in subdivisions (1) through (7), subsection (a) of
42 this section, may be asserted against him.

43 (c) At the time of filing a complaint and before a sum-
44 mons is issued thereon, the plaintiff, or someone for him,
45 shall execute a bond in the sum of one hundred dollars
46 before the clerk of the court, with surety to be approved by
47 said clerk, conditioned that on failure of the plaintiff to
48 prevail in the action or proceeding that he will reimburse
49 the defendant, or cause him to be reimbursed, the necessary
50 taxable costs incurred by him in and about the defense of the
51 action or proceeding in this state, and upon the issuance of
52 a summons, the clerk shall certify thereon that such bond
53 has been given and approved. Service shall be made by
54 leaving the original and two copies of both the summons and
55 the complaint with the certificate aforesaid of the clerk

56 thereon, and a fee of two dollars with the secretary of
57 state, or in his office, and such service shall be sufficient
58 upon such nonresident: *Provided*, That notice of such service
59 and a copy of the summons and complaint shall forthwith
60 be sent by registered mail, return receipt requested, by the
61 secretary of state to the defendant, and the defendant's
62 return receipt signed by himself or his duly authorized agent
63 or the registered mail so sent by the secretary of state which
64 is refused by the addressee and which registered mail is
65 returned to the secretary of state, or to his office, showing
66 thereon the stamp of the post office department that delivery
67 has been refused, shall be appended to the original summons
68 and complaint, and filed therewith in the clerk's office of
69 the court from which process issued. If any defendant served
70 with summons and complaint fails to appear and defend
71 within thirty days of service, judgment by default may be
72 rendered against him at any time thereafter. The court may
73 order such continuances as may be reasonable to afford the
74 defendant opportunity to defend the action or proceeding.

75 (d) The fee of two dollars, remitted to the secretary of
76 state at the time of service, shall be taxed in the costs of
77 the action or proceeding and the secretary of state shall
78 pay into the state treasury all funds so coming into his
79 hands from such service. The secretary of state shall keep
80 a record in his office of all such process and the day and
81 hour of service thereof.

82 (e) The following words and phrases, when used in this
83 section, shall for the purpose of this section and unless a
84 different intent be apparent from the context, have the follow-
85 ing meanings:

86 (1) "Duly authorized agent" means and includes among
87 others a person who, at the direction of or with the knowledge
88 or acquiescence of a nonresident, engages in such act or
89 acts and shall include among others a member of the family
90 of such nonresident or a person who, at the residence, place
91 of business or post office of such nonresident, usually receives
92 and receipts for mail addressed to such nonresident.

93 (2) "Nonresident" means any person, other than voluntary
94 unincorporated associations, who is not a resident of this state
95 or a resident who has moved from this state subsequent to
96 engaging in such act or acts, and among others includes a
97 nonresident firm, partnership, or corporation or a firm, part-
98 nership, or corporation which has moved from this state
99 subsequent to any of said such act or acts.

100 (3) "Nonresident plaintiff or plaintiffs" means a non-
101 resident of this state who institutes an action or proceeding
102 in a circuit court in this state having jurisdiction against a
103 nonresident of this state pursuant to the provisions of this
104 section.

105 (f) The provision for service of process herein is cumulative
106 and nothing herein contained shall be construed as a bar to
107 the plaintiff in any action or proceeding from having process
108 in such action served in any other mode and manner provided
109 by the law of this state or by the law of the place in which
110 the service is made for service in that place in an action
111 in any of its courts of general jurisdiction.

112 (g) This section shall not be retroactive and the provisions
113 hereof shall not be available to a plaintiff in a cause of
114 action arising from or growing out of any of said acts
115 occurring prior to the effective date of this section.

CHAPTER 2

(Com. Sub. for H. B. 1229—By Mr. Shiflet and Mrs. Pitsenberger)

[Passed March 9, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section seven, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to agencies of the alcohol beverage control commissioner; providing for classification and compensation of agencies according to gross volume of busi-

ness; and requiring agencies to pay expenses out of the compensation provided.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-7. Compensation and bond of agent.

1 Agents shall be compensated based upon the average month-
2 ly gross revenues of the agency or store, excluding sales tax
3 thereon. The amount of compensation shall be computed and
4 paid as follows:

5 (1) For gross revenues up to three thousand dollars per
6 month, four hundred dollars compensation per month.

7 (2) For gross revenues of not less than three thousand
8 dollars nor more than six thousand dollars per month, ten
9 percent of all gross revenues between said three thousand
10 dollars and six thousand dollars, which shall be in addition
11 to the compensation as provided in subdivision (1) here-
12 inabove.

13 (3) For gross revenues of not less than six thousand dollars
14 nor more than eight thousand dollars per month, eight percent
15 of all gross revenues between said six thousand dollars and
16 eight thousand dollars, which shall be in addition to the
17 compensation as provided in subdivisions (1) and (2) here-
18 inabove.

19 (4) For gross revenues of not less than eight thousand
20 dollars nor more than ten thousand dollars per month, six
21 percent of all gross revenues between said eight thousand
22 dollars and ten thousand dollars, which shall be in addition
23 to the compensation as provided in subdivisions (1), (2) and
24 (3) hereinabove.

25 (5) For gross revenues over ten thousand dollars per
26 month, four percent of all gross revenues over said ten thou-
27 sand dollar amount, which shall be in addition to the com-

28 pensation as provided in subdivisions (1), (2), (3) and (4)
29 hereinabove.

30 The agent shall pay for utilities, renovations and operating
31 expenses of the agency from the compensation set forth
32 herein.

33 Each agent shall give bond in an amount fixed by the
34 commissioner conditioned upon the faithful observance of the
35 provisions of this chapter, compliance with the rules and
36 regulations of the commissioner, and the accounting for and
37 paying over of all moneys coming into his custody by virtue
38 of his agency. An agent shall not, at any time, have on hand
39 a stock of alcoholic liquors greater in value than the amount
40 of his bond.

CHAPTER 3

(Com. Sub. for H. B. 1506—By Mr. Tompkins)

[Passed March 9, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to enacting an antitrust act; declaring contracts and combinations in restraint of trade unlawful; defining specific acts in restraint of trade to be unlawful; declaring the establishment, maintenance or use of monopolies to be unlawful; the powers and duties of the attorney general with respect thereto; exemptions to unlawful acts of monopolization; investigations to be conducted by the attorney general; injunctions and other relief and jurisdiction relating to violations; punishment for violations; providing for treble damage suits in certain cases; final judgments in civil proceedings as prima facie evidence in other proceedings; limitation of actions, and suspension of limitation period; authorizing cumulative remedies; cooperation with federal government and other states

with respect to antitrust matters; venue; judicial construction; parens patriae; the establishment of an antitrust enforcement fund and its uses; rules and regulations; assistance by public agencies, officials and employees; assurances of voluntary compliance; and providing for the severability of the provisions of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. ANTITRUST ACT; RESTRAINT OF TRADE.

- §47-18-1. Short title.
- §47-18-2. Definitions.
- §47-18-3. Contracts and combinations in restraint of trade.
- §47-18-4. Establishment, maintenance or use of monopoly.
- §47-18-5. Exemptions.
- §47-18-6. General powers and duties of attorney general.
- §47-18-7. Investigations; powers and duties of attorney general.
- §47-18-8. Injunctions and other relief; violations; jurisdiction.
- §47-18-9. Damages; treble damage suits.
- §47-18-10. Final judgment in civil proceeding as prima facie evidence.
- §47-18-11. Limitation of actions.
- §47-18-12. Suspension of limitation period.
- §47-18-13. Cumulative remedies.
- §47-18-14. Cooperation with federal government and other states.
- §47-18-15. Venue.
- §47-18-16. Judicial construction.
- §47-18-17. Attorney general to bring actions on behalf of state residents; procedures used in such actions; damages.
- §47-18-18. Disposition of funds.
- §47-18-19. Antitrust enforcement fund.
- §47-18-20. Rules and regulations.
- §47-18-21. Cooperation by public agencies, officials and employees.
- §47-18-22. Assurances of voluntary compliance.
- §47-18-23. Severability.

§47-18-1. Short title.

- 1 This article shall be known and may be cited as the "West
- 2 Virginia Antitrust Act."

§47-18-2. Definitions.

- 1 As used in this article, unless the context otherwise requires:
- 2 (a) "Person" shall mean any natural person or persons, or

3 any corporation, partnership, company, trust or association of
4 persons.

5 (b) "Trade or commerce" shall include all economic
6 activity involving or relating to any commodity or service.

7 (c) "Commodity" shall mean any kind of real or personal
8 property.

9 (d) "Service" shall mean any activity which is performed
10 in whole or in part for the purpose of financial gain, including
11 but not limited to sale, rental, leasing or licensing for use.

§47-18-3. Contracts and combinations in restraint of trade.

1 (a) Every contract, combination in the form of trust or
2 otherwise, or conspiracy in restraint of trade or commerce in
3 this state shall be unlawful.

4 (b) Without limiting the effect of subsection (a) of this
5 section, the following shall be deemed to restrain trade or
6 commerce unreasonably and are unlawful:

7 (1) A contract, combination or conspiracy between two
8 or more persons:

9 (A) for the purpose or with the effect of fixing, controlling,
10 or maintaining the market price, rate or fee of any com-
11 modity or service; or

12 (B) fixing, controlling, maintaining, limiting or discon-
13 tinuing the production, manufacture, mining, sale or supply
14 of any commodity, or the sale or supply of any service, for the
15 purpose or with the effect of fixing, controlling or maintaining
16 the market price, rate or fee of the commodity or service; or

17 (C) allocating or dividing customers or markets, functional
18 or geographic, for any commodity or service.

19 (2) A contract, combination or conspiracy between two or
20 more persons whereby, in the letting of any public or private
21 contract:

22 (A) the price quotation of any bid is fixed or controlled; or

23 (B) one or more persons submits a bid intending it to be
24 higher than another bid and thus complementary thereto,

25 submits a bid intending it to be substantially identical to
26 another bid, or refrains from the submission of a bid.

27 (3) A contract, combination or conspiracy between two or
28 more persons refusing to deal with any other person or persons
29 for the purpose of effecting any of the acts described in sub-
30 divisions (1) and (2) of this subsection.

§47-18-4. Establishment, maintenance or use of monopoly.

1 The establishment, maintenance or use of a monopoly or an
2 attempt to establish a monopoly of trade or commerce, any part
3 of which is within this state, by any persons for the purpose of
4 excluding competition or controlling, fixing or maintaining
5 prices is unlawful.

§47-18-5. Exemptions.

1 (a) Labor of a human being is not a commodity or an
2 article of commerce.

3 (b) Nothing in this article shall be construed to forbid the
4 existence and operation of any labor, agricultural or horti-
5 cultural organization instituted for the purpose of mutual help,
6 while lawfully carrying out its legitimate objects; or the
7 existence or operation of any person whose activities or
8 operations are regulated, to the extent of such regulation,
9 pursuant to the laws of this state or of the United States,
10 by a regulatory agency of this state or of the United States;
11 or the bona fide religious and charitable activities of any
12 nonprofit corporation, trust or organization established ex-
13 clusively for religious or charitable purposes or both.

§47-18-6. General powers and duties of attorney general.

1 The attorney general shall investigate suspected violations
2 of, and institute such proceedings as are hereinafter provided
3 for violation of the provisions of this article. The attorney
4 general may direct the county prosecutor of any county in
5 which such proceedings may be brought to aid and assist him
6 in the conduct of such investigation and proceedings.

§47-18-7. Investigations; powers and duties of attorney general.

1 (a) If the attorney general has probable cause to believe

2 that a person has engaged in an act which is subject to action
3 by the attorney general under any of the provisions of this
4 article, he may make an investigation to determine if the act
5 has been committed and, to the extent necessary for this
6 purpose, may administer oaths or affirmations, and may sub-
7 poena witnesses, compel their attendance, adduce evidence,
8 and require the production of any matter which is relevant to
9 the investigation, including the existence, description, nature,
10 custody, condition and location of any books, records, docu-
11 ments or other tangible things and the identity and location of
12 persons having knowledge of relevant facts, or any other
13 matter reasonably calculated to lead to the discovery of ad-
14 missible evidence.

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

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

28 (d) The attorney general shall not make public the name
29 or identity of a person whose acts or conduct he investigates
30 pursuant to this section or the facts disclosed in the in-
31 vestigation, but this subsection does not apply to disclosures
32 in actions or enforcement proceedings pursuant to this article.

§47-18-8. Injunctions and other relief; violations; jurisdiction.

1 The attorney general may institute proceedings to prevent
2 and restrain violations of the provisions of this article. In
3 addition to granting such temporary, interlocutory, or per-
4 manent relief as is necessary to prevent and restrain a violation,
5 the courts of this state may grant injunctions reasonably

6 necessary to restore and preserve competition in the trade or
7 commerce affected by a violation of this article.

8 If a permanent injunction is issued in such proceedings,
9 reasonable costs of the action may be awarded the state,
10 including but not limited to expenses of discovery and docu-
11 ment reproduction.

12 In addition to injunctive relief authorized, any person who
13 violates the provisions of this article shall be liable to a
14 penalty of not more than the greater of a total of one hundred
15 thousand dollars or five hundred dollars per day for each
16 and every day of said violation.

§47-18-9. Damages; treble damage suits.

1 Any person who shall be injured in his business or property
2 by reason of a violation of the provisions of this article may
3 bring an action therefor and shall recover threefold the
4 damages sustained by him, together with reasonable attor-
5 neys' fees, filing fees and reasonable costs of the action.
6 Reasonable costs of the action may include, but shall not be
7 limited to the expenses of discovery and document repro-
8 duction.

9 The state and any of its political subdivisions and public
10 agencies shall be deemed a person within the meaning of this
11 section. The attorney general may bring an action on behalf of
12 this state, or any of its public agencies, counties, municipalities
13 or other political subdivisions to recover the damages provided
14 for by this section or provision of federal law: *Provided*, That
15 this shall not impair the authority of any such county, muni-
16 cipality or other political subdivision to bring such action on
17 its own behalf.

§47-18-10. Final judgment in civil proceeding as prima facie evidence.

1 A final judgment rendered in any civil proceeding brought
2 by the state for violation of this article to the effect that a
3 defendant has violated said article shall be prima facie evidence
4 against such defendant in any proceeding brought by any other
5 party against such defendant pursuant to section eight of this
6 article, as to all matters with respect to which said judgment or

7 decree would be an estoppel as between the parties thereto:
8 *Provided*, That this section shall not apply to consent judg-
9 ments or decrees entered before any testimony has been
10 taken.

§47-18-11. Limitation of actions.

1 Any action brought to enforce the provisions of this article
2 shall be barred unless commenced within four years after the
3 cause of action arose, or if the cause of action is based upon a
4 conspiracy in violation of this article, within four years after
5 the plaintiff discovered, or by the exercise of reasonable dili-
6 gence should have discovered the facts relied upon for proof of
7 the conspiracy. For the purpose of this section, a cause of
8 action for a continuing violation is deemed to arise at any time
9 during the period of such violation.

§47-18-12. Suspension of limitation period.

1 Whenever any civil proceeding shall be commenced by the
2 state to prevent, restrain or punish a violation of this article,
3 the running of the statute of limitations in respect of every
4 private right of action arising under this article and based in
5 whole or in part on any matter complained of in said proceed-
6 ing shall be suspended during the pendency thereof and for
7 one year thereafter: *Provided*, That whenever the running of
8 the statute of limitations in respect of a cause of action
9 arising under section eight shall be suspended hereunder,
10 any action to enforce such cause of action shall be forever
11 barred unless commenced either within the period of suspen-
12 sion or within four years after the cause of action accrued,
13 whichever is later.

§47-18-13. Cumulative remedies.

1 The remedies provided in this article shall be cumulative.

§47-18-14. Cooperation with federal government and other states.

1 The attorney general may cooperate with officials of the
2 federal government and the several states in the enforcement of
3 this article.

§47-18-15. Venue.

1 Actions or proceedings under this article may be brought in

2 the circuit court of any county in which an act on which the
3 action or proceeding is based occurred, or in any county in
4 which the respondent or defendant resides or transacts busi-
5 ness.

§47-18-16. Judicial construction.

1 This article shall be construed liberally and in harmony
2 with ruling judicial interpretations of comparable federal
3 antitrust statutes.

§47-18-17. Attorney general to bring actions on behalf of state residents; procedures used in such actions; damages.

1 (a) The attorney general shall be permitted to bring an
2 action as *parens patriae* of natural persons who are citizens and
3 residents of this state, under this article, and in proper federal
4 court for violations of the federal antitrust laws or of both this
5 article and the federal antitrust laws, to secure relief as pro-
6 vided under this article and other lawful relief as appropriate.

7 (b) In any action brought under this section, the attorney
8 general shall, at such times, in such manner, and with such
9 content as the court may direct, cause notice to be given by
10 publication. If the court finds that notice given solely by pub-
11 lication would deny due process of law to any person or per-
12 sons, the court may direct further notice to such person or
13 persons according to the circumstances of the case.

14 (c) Any person on whose behalf an action is brought under
15 this section may elect to exclude from adjudication the portion
16 of the state claim for monetary relief attributable to him by
17 filing notice of such election with the court within such time as
18 specified in the notice given pursuant to this subsection.

19 (d) The final judgment in an action under this section shall
20 be *res judicata* as to any claim under this article by any person
21 on behalf of whom such action was brought and who fails to
22 give such notice within the period specified in the notice given
23 pursuant to subsection (c).

24 (e) An action under subsection (a) shall not be dismissed
25 or compromised without approval of the court, and notice of
26 any proposed dismissal or compromise shall be given in such
27 manner as the court directs.

28 (f) In any action brought under this section, damages may
29 be proved and assessed in the aggregate by statistical or
30 sampling methods, by the computation of illegal overcharges,
31 or by such other reasonable system of estimating aggregate
32 damages as the court in its discretion may permit without the
33 necessity of separately proving the individual claim of, or
34 amount of damage to, persons on whose behalf the suit was
35 brought. The court shall exclude from the amount of monetary
36 relief awarded in such action any amount of monetary relief
37 which:

38 (1) duplicate amounts which have been awarded for the
39 same injury; or

40 (2) are properly allocable to natural persons who have
41 excluded their claims pursuant to subsection (c).

42 (g) In any action brought under this section, the court
43 shall award to the state for payment into the state treasury
44 for the use of the antitrust enforcement fund:

45 (1) an amount attributable to the recovery of the state
46 and its public agencies; and

47 (2) the greater of:

48 (A) any amount assessed as reasonable attorney fees,
49 filing fees, and reasonable costs of the action; or

50 (B) an amount equal to the expenses and costs of investiga-
51 tion, litigation and fund administration attributable to the case.

52 (h) The court shall afford the citizens and residents and
53 the public bodies of this state other than the state and its
54 public agencies a reasonable opportunity individually to secure
55 appropriate portions of the remainder of the monetary relief
56 assessed under this section and thereafter shall award the
57 undistributed portion of said remainder to the state for
58 payment into the general fund of the state treasury for the
59 overall benefit of the citizens, residents and public bodies
60 of this state.

§47-18-18. Disposition of funds.

1 All civil penalties exacted pursuant to this article, unless

2 otherwise specifically provided for, shall be paid into the state
3 treasury for the use of the antitrust enforcement fund.

§47-18-19. Antitrust enforcement fund.

1 All money received by the state from July first, one thou-
2 sand nine hundred seventy-eight, as a result of actions by the
3 attorney general pursuant to this article or to the federal anti-
4 trust laws shall be placed in a separate fund by the state
5 treasurer, to be known as the antitrust enforcement fund,
6 and shall be used solely for the payment of fees, costs,
7 expenses and other matters incurred by the attorney general
8 in connection with antitrust enforcement activities, and the
9 first two hundred fifty thousand dollars in such funds shall
10 not expire at the end of each fiscal year but shall, by
11 operation of law, be automatically reappropriated from year
12 to year and all sums in excess of two hundred fifty thousand
13 dollars remaining in such fund shall expire at the end of each
14 fiscal year and shall revert to the general revenue fund.

§47-18-20. Rules and regulations.

1 The attorney general may make and adopt such rules and
2 regulations as may be necessary for the enforcement and
3 administration of this article.

§47-18-21. Cooperation by public agencies, officials and employees.

1 It shall be the duty of all public officers, their deputies,
2 assistants, clerks, subordinates and employees, to render and
3 furnish to the attorney general, his deputy or other designated
4 representative, when so requested, all information and assis-
5 tance in their possession and within their power for the en-
6 forcement of the provisions of this article.

§47-18-22. Assurances of voluntary compliance.

1 In the administration of this article, the attorney general
2 may accept an assurance of voluntary compliance with
3 respect to any method, act or practice deemed to be a viola-
4 tion of this article from any person who has engaged or was
5 about to engage in such method, act or practice. Such
6 assurance may include a stipulation for voluntary payment
7 by the alleged violator of damages sustained by any person or

8 public body. Any such assurance shall be in writing and be
 9 filed with the circuit court in which the alleged violator resides,
 10 has his principal place of business, or is doing business. Such
 11 assurance of voluntary compliance shall not be considered
 12 an admission of violation for any purpose. Matters thus
 13 closed may at any time be reopened by the attorney general
 14 for further proceedings in the public interest.

§47-18-23. Severability.

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

CHAPTER 4

(Com. Sub. for S. B. 50—By Mr. Brotherton, Mr. President)

[Passed March 13, 1978: in effect from passage. Approved by the Governor, after deleting two items and reducing the totals to correspond therewith. Subsequently, in a mandamus proceeding in the Supreme Court of Appeals, the Court was petitioned to direct the Clerk of the House of Delegates to publish different figures for Account No. 111 than those enacted by the Legislature. See Clerk's note inserted between pages 28 and 27.]

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

Be it enacted by the Legislature of West Virginia:

Title

1. **General Provisions.**
2. **Appropriations.**
3. **Administration.**

TITLE 1. GENERAL PROVISIONS.

- §1. General policy.
- §2. Definitions.
- §3. Classification of appropriations.
- §4. Method of expenditure.

1 **Section 1. General policy.**—The purpose of this act is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hun-
5 dred seventy-nine.

1 **Sec. 2. Definitions.**—For the purpose of this act: “Gov-
2 ernor” shall mean the Governor of the State of West
3 Virginia.

4 “Spending Unit” shall mean the department, agency or
5 institution to which an appropriation is made.

6 The “fiscal year” one thousand nine hundred seventy-nine
7 shall mean the period from July first, one thousand nine
8 hundred seventy-eight through June thirtieth, one thou-
9 sand nine hundred seventy-nine.

10 “From collections” shall mean that part of the total ap-
11 propriation which must be collected by the spending unit
12 to be available for expenditure. If the authorized amount
13 of collections is not collected, the total appropriation for
14 the spending unit shall be reduced automatically by the
15 amount of the deficiency in the collection. If the amount
16 collected exceeds the amount designated “from collections”
17 the excess shall be set aside in a special surplus fund and
18 may be expended for the purpose of the spending unit as
19 provided by Chapter 5-A, Article 2 of the Code of West
20 Virginia.

1 **Sec. 3. Classification of appropriations.**—An appropria-
2 tion for:

3 “Personal Services” shall be expended only for the pay-
4 ment of salaries, wages, fees and other compensation for
5 skill, work or employment, except from the appropriations
6 made to the spending units of state government, there may
7 be transferred upon approval of the Governor to a special
8 account an amount sufficient to match Federal Funds under
9 any Federal Act.

10 Unless otherwise specified, appropriations for personal
11 services shall include salaries of heads of spending units;

12 "Current expenses" shall be expended only for operating
13 cost other than personal services or capital outlay;

14 "Repairs and alterations" shall include all expenditures
15 for materials, supplies and labor used in repairing and
16 altering buildings, grounds and equipment, other than per-
17 sonal service;

18 "Equipment" shall be expended only for things which
19 have an appreciable and calculable period of usefulness in
20 excess of one year;

21 "Buildings" shall include construction and alteration of
22 structures and the improvements of lands, sewer and water
23 improvements, and shall include shelter, support, storage,
24 protection, or the improvement of a natural condition;

25 "Lands" shall be expended only for the purchase of lands
26 or interest in lands.

27 Appropriations otherwise classified shall be expended
28 only where the distinction of expenditures for different
29 purposes cannot well be determined in advance or it is
30 necessary or desirable to permit the spending unit freedom
31 to spend an appropriation for more than one of the above
32 purposes.

1 **Sec. 4. Method of expenditure.**—Money appropriated
2 by this act, unless otherwise specifically directed, shall be
3 appropriated and expended according to the provisions of
4 Chapter 12, Article 3 of the Code of West Virginia, accord-
5 ing to any law detailing a procedure specifically limiting
6 that article.

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

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Department of agriculture (meat inspection)—Acct. No. 514	60
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BUSINESS AND INDUSTRIAL RELATIONS

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West Virginia industrial school for boys—Acct. No. 370	46
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Department of natural resources—Acct. No. 565	61
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Public land corporation—Acct. No. 566	62
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Department of education—Acct. No. 286	39
Department of education (aid for exceptional children)—Acct. No. 296	42
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State board of education (vocational division)—Acct. No. 294	41
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State department of education (teacher education program)—Acct. No. 277	37
State FFA-FHA camp and conference center—Acct. No. 336	43
Teachers retirement board—Acct. No. 298	42
West Virginia board of regents—Acct. No. 280	38
West Virginia board of regents (control)—Acct. No. 279	37
West Virginia college of osteopathic medicine—Acct. No. 281	38
West Virginia library commission—Acct. No. 350	43
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West Virginia University (medical school)—Acct. No. 285	39

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Governor's office (disaster relief-matching)—Acct. No. 126	30
Governor's office (emergency flood disaster relief)—Acct. No. 131	31
Governor's office (McMechen and Stonewood relief)—Acct. No. 127	30
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Auditor's office (general administration)—Acct. No. 150	31
Auditor's office (social security)—Acct. No. 151	32
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Municipal bond commission—Acct. No. 170	33
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State tax department—Acct. No. 180	33
State tax department (property appraisal)—Acct. No. 185	33
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Solid waste disposal—Acct. No. 402	50
State board of education (rehabilitation division)—Acct. No. 440	55
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State health department—Acct. No. 400	48
State health department—mental hospitals—Acct. No. 416	52
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West Virginia civil service system—Acct. No. 584	64
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§5. Appropriations from revenue sharing trust fund.

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§6. Appropriation from countercyclical fiscal assistance trust fund.

Governor's office—Acct. No. 8012	90
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§7. Reappropriations—“Revenue Sharing Trust Fund.”

§8. Special revenue appropriations.

§9. State improvement fund appropriation.

- §10. Specific funds and collection accounts.
- §11. Appropriation for refunding erroneous payments.
- §12. Sinking fund deficiencies.
- §13. Appropriations from taxes and license fees.
- §14. Appropriations to pay costs of publication of delinquent corporations.
- §15. Appropriations for local governments.
- §16. Total appropriations.
- §17. General school fund.

1 **Section 1. Appropriations from general revenue.**—From
 2 the state fund, general revenue, there is hereby appropri-
 3 ated conditionally upon the fulfillment of the provisions set
 4 forth in Chapter 5-A, Article 2 of the Code of West Vir-
 5 ginia, the following amounts, as itemized, for expenditure
 6 during the fiscal year one thousand nine hundred seventy-
 7 nine:

LEGISLATIVE

1—Senate	<i>Fiscal Year</i>
Acct. No. 101	1978-1979
1 Compensation of Members	\$ 235,000
2 Compensation and per diem of officers and em- 3 ployees	650,000
4 Expenses of Members	130,000
5 Current Expenses and Contingent Fund	255,000
6 Printing Blue Book	117,000
7 Total	\$ 1,387,000

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

15 The appropriations for the Senate for the fiscal
 16 year 1977-78 are to remain in full force and

17 effect, and are hereby reappropriated to June
18 30, 1979.

19 Any balances so reappropriated may be
20 transferred and credited to the 1978-79 ac-
21 counts.

22 Upon written request of the Clerk of the Senate
23 the State Auditor shall transfer amounts be-
24 tween items of the total appropriation in
25 order to protect or increase the efficiency of
26 service.

27 The Clerk of the Senate with approval of the
28 President is authorized to draw his requisitions upon the Auditor, payable out of the
29 Current Expenses and Contingent Fund of
30 the Senate, for any bills for supplies and ser-
31 vices that may have been incurred by the
32 Senate and not included in the appropriation
33 bill, for supplies and services incurred in
34 preparation for the opening, the conduct of
35 the business and after adjournment of any
36 regular or extraordinary session, and for the
37 necessary operation of the Senate offices, the
38 requisition for same to be accompanied by
39 the bills to be filed with the Auditor.
40

41 The Clerk of the Senate with approval of the
42 President shall have authority to employ such
43 staff personnel during any session of the
44 Legislature as shall be needed in addition to
45 staff personnel authorized by the Senate reso-
46 lution adopted during any such session. The
47 Clerk of the Senate with approval of the
48 President shall have authority to employ such
49 staff personnel between sessions of the Legis-
50 lature as shall be needed, the compensation
51 of all staff personnel during and between
52 sessions of the Legislature, notwithstanding
53 any such Senate resolution, to be fixed by the
54 President of the Senate. The Clerk is hereby
55 authorized to draw his requisitions for the

56 payments of all such staff personnel upon
 57 the State Auditor, payable out of the appro-
 58 priation for Compensation and Per Diem of
 59 Officers and Employees or Current Expenses
 60 and Contingent Fund of the Senate for such
 61 services.

62 For duties imposed by law and the Senate, the
 63 Clerk of the Senate shall be paid a monthly
 64 salary as provided in Senate resolution
 65 adopted January 1978, and payable out of
 66 the amount appropriated for Compensation
 67 and per diem of officers and employees.

2—*House of Delegates*

Acct. No. 102

1 Compensation of Members	\$ 550,000
2 Compensation and per diem of officers and	
3 employees	400,000
4 Expenses of Members	200,000
5 Current Expenses and Contingent Fund	200,000
	-
6 Total	\$ 1,350,000

7 The appropriations for the House of Delegates
 8 for the fiscal year 1977-78 are to remain in full
 9 force and effect, and are hereby reappropri-
 10 ated to June 30, 1979.

11 Any balances so reappropriated may be trans-
 12 ferred and credited to the 1978-79 accounts.

13 Upon the written request of the Clerk of the
 14 House of Delegates, the State Auditor shall
 15 transfer amounts between items of the total
 16 appropriation in order to protect or increase
 17 the efficiency of the service.

18 The Clerk of the House of Delegates, with ap-
 19 proval of the Speaker, is authorized to draw
 20 his requisitions upon the Auditor, payable out
 21 of the Contingent Fund of the House of Dele-

22 gates, for any bills for supplies and services
 23 that may have been incurred by the House of
 24 Delegates, and not included in the appropriation
 25 bill, for bills for services and supplies in-
 26 curred in preparation for the opening of the
 27 session and after adjournment, and for the
 28 necessary operation of the House of Dele-
 29 gates' offices, the requisition for the same to
 30 be accompanied by bills to be filed with the
 31 Auditor.

32 For duties imposed by law and by the House
 33 of Delegates, including salary allowed by law
 34 as keeper of the rolls, the Clerk of the House
 35 of Delegates shall be paid a monthly salary
 36 as provided in House resolution adopted
 37 January 1978, payable from the Per Diem of
 38 Officers and Employees Fund or the Contingent
 39 Fund of the House of Delegates, and the
 40 full-time employees of the House of Delegates
 41 shall be paid at the salaries provided in said
 42 resolution.

43 The Speaker of the House of Delegates, upon
 44 approval of the House Committee on Rules,
 45 shall have authority to employ such staff per-
 46 sonnel during and between sessions of the
 47 Legislature as shall be needed, and the Clerk
 48 of the House is hereby authorized to draw
 49 requisitions upon the State Auditor, payable
 50 from the Per Diem of Officers and Employees
 51 Fund or the Contingent Fund of the House of
 52 Delegates, for such services.

3—Joint Expenses

Acct. No. 103

1	Joint Committee on Government and	
2	Finance	\$ 0
3	To pay cost of Legislative Printing	600,000
4	Other Legislative Committees	50,000

5	Commission on Interstate Cooperation	25,000
6	Total	\$ 675,000

7 The appropriations for Joint Expenses for the
8 fiscal year 1977-78 are to remain in full force
9 and effect and are hereby reappropriated to
10 June 30, 1979. Any balances so reappropriated
11 may be transferred and credited to the 1978
12 -79 accounts.

13 Upon written request of the Clerk of the Senate
14 and the Clerk of the House of Delegates, the
15 State Auditor shall transfer amounts between
16 items of the total appropriation in order to
17 protect or increase the efficiency of the ser-
18 vice.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 111

1	Personal Services	\$ 10,103,054
2	Other Expenses	1,562,600
3	Judges' Retirement System	750,000
4	Other Court Costs	1,770,000
5	Judicial Training Program	100,000
6	Law Libraries Program	250,000
7	Total	\$ 14,535,654

8 This appropriation shall be administered by the
9 Administrative Director of the State Supreme
10 Court of Appeals who shall draw his requisitions
11 for warrants in payment in the form of
12 payrolls, making deductions therefrom, as re-
13 quired by law, for taxes and other items.

14 The appropriation for Judges' Retirement
15 System is to be transferred to the Judges'
16 Retirement Fund, in accordance with the law
17 relating thereto upon requisition of the Ad-

Clerk's Note.—On June 19, 1978, the Supreme Court of Appeals, in a mandamus proceeding, mandamus no. 14181, in an action styled State ex rel. Charles F. Bagley, Jr., etc. et al. v. C. A. Blankenship, Clerk, etc., held the action of the W. Va. Legislature as to Account No. 111, the Judiciary's budget, unconstitutional, the Legislature having decreased line items for fiscal year 1978-1979, and by mandamus required the Clerk of the House of Delegates to publish Account No. 111 as indicated by the Court.

Following is a comparative analysis of the Judiciary budget as set forth in the Court's opinion:

I. Budget Submitted by Judiciary

1	Personal Services	\$ 10,478,454
2	Other Expenses	1,562,600
3	Judges' Retirement System	750,000
4	Other Court Costs	1,770,000
5	Judicial Training Program	100,000
6	Law Libraries Program	250,000

TOTALS \$ 14,911,054

II. Unconstitutional Budget Adopted by Legislature

1	Personal Services	\$ 9,177,634
2	Other Expenses	962,400
3	Judges' Retirement System	750,000
4	Other Court Costs	1,684,000
5	Judicial Training Program	50,000
6	Law Libraries Program	117,000

TOTALS \$ 12,741,034

III. Constitutional Budget Required to be Published

1	Personal Services	\$ 10,103,054
2	Other Expenses	1,562,600
3	Judges' Retirement System	750,000
4	Other Court Costs	1,770,000
5	Judicial Training Program	100,000
6	Law Libraries Program	250,000

TOTALS \$ 14,535,654

- 18 ministrative Director of the State Supreme
 19 Court of Appeals.
 20 Any unexpended balance remaining in this ap-
 21 propriation at the close of fiscal year 1977-78
 22 is hereby reappropriated for expenditure
 23 during the fiscal year 1978-79.

EXECUTIVE

5—*Governor's Office*

Acct. No. 120

1	Salary of Governor	\$	50,000
2	Other Personal Services		670,640
3	Current Expenses		186,772
4	Equipment		26,680
5	Total	\$	934,092

6—*Office of Economic and Community Development*

Acct. No. 121

1	Personal Services	\$	1,400,000
2	Current Expenses		2,218,134
3	Equipment		20,100
4	Federal-State Coordination		2,138,923
5	T.R.I.P.		—0—
6	Office of Criminal Justice and Highway Safety ..		570,000
7	Regional Councils—to match Federal Funds		225,000
8	National Youth Science Camp		100
9	Community Water Development Grants and		
10	Partnership Grants		5,000,000
11	Economic Development Loan Fund		6,000,000
12	Total	\$	17,572,257

- 13 Any unexpended balance remaining in accounts
 14 "Federal-State Coordination," "Governor's
 15 Committee on Crime, Delinquency and Cor-
 16 rection," "Office of Criminal Justice and High-
 17 way Safety," "Regional Council—To Match
 18 Federal Funds," and "National Youth Science
 19 Camp" at the close of the fiscal year 1977-78

20 is hereby reappropriated for expenditure
21 during the fiscal year 1978-79.

7—*Governor's Office—Custodial Fund*

Acct. No. 123

1 Unclassified—Total\$ 192,500

2 To be used for current general expenses, in-
3 cluding compensation of employees, house-
4 hold maintenance, cost of official functions,
5 and any additional household expenses occa-
6 sioned by such official functions.

8—*Governor's Office—Civil Contingent Fund*

Acct. No. 124

1 Unclassified—Total\$ 250,000

2 Of the appropriation there may be expended,
3 at the discretion of the Governor, an amount
4 not to exceed \$1,000.00 as West Virginia's
5 contribution to the Interstate Oil Compact
6 Commission.

7 Any unexpended balance remaining in this
8 appropriation at the close of the fiscal year
9 1977-78 is hereby reappropriated for expendi-
10 ture during the fiscal year 1978-79.

9—*Governor's Office—Disaster Relief-Matching*

Acct. No. 126

1 Unclassified—Total\$ 50,000

2 To match and aid Federal Programs, and any
3 part of this appropriation may be transferred
4 to any department for such purposes.

10—*Governor's Office—McMechen and Stonewood Relief*

Acct. No. 127

1 Any unexpended balance remaining in the ap-
2 propriation for "Governor's Office—Mc-
3 Mechen and Stonewood Relief" at the close of

4 the fiscal year 1977-78 is hereby reappro-
 5 priated for expenditure during the fiscal year
 6 1978-79.

11—*Office of Emergency Services*

Acct. No. 130

1	Personal Services	\$	175,639
2	Current Expenses		42,080
3	Equipment		11,290
4	Total	\$	229,009

5 Any unexpended balance remaining in the
 6 appropriation "Communications Center" at
 7 the close of the fiscal year 1977-78 is hereby
 8 reappropriated for expenditure during the
 9 fiscal year 1978-79.

12—*Governor's Office—
 Emergency Flood Disaster Relief*

Acct. No. 131

1 Any unexpended balance remaining in this
 2 appropriation at the close of the fiscal year
 3 1977-78 is hereby reappropriated for expendi-
 4 ture during the fiscal year 1978-79.

FISCAL

13—*Auditor's Office—General Administration*

Acct. No. 150

1	Salary of State Auditor	\$	32,500
2	Other Personal Services		957,015
3	Current Expenses		397,125
4	Equipment		39,700
5	Mental Hygiene Fund		200,000
6	Microfilm		20,000
7	Representation of Needy Persons Fund		1,500,000
8	Total	\$	3,146,340

14—*Auditor's Office—Social Security*

Acct. No. 151

1 To match contributions of state employees for
 2 social security—Total\$ 9,000,000

3 The above appropriation is intended to cover
 4 the state's share of social security costs for
 5 those spending units operating from General
 6 Revenue Fund. The State Department of
 7 Highways, Department of Motor Vehicles,
 8 Workmen's Compensation Commission, Pub-
 9 lic Service Commission, and other depart-
 10 ments operating from Special Revenue Fund
 11 and/or Federal Funds shall pay their propor-
 12 tionate share of the social security cost for
 13 their respective divisions.

14 Any unexpended balance remaining in the ap-
 15 propriation for "Auditor's Office—Social
 16 Security" at the close of the fiscal year 1977-
 17 78 is hereby reappropriated for expenditure
 18 during the fiscal year 1978-79.

15—*Treasurer's Office*

Acct. No. 160

1	Salary of State Treasurer ..	\$	35,000
2	Other Personal Services		494,743
3	Current Expenses		558,575
4	Equipment		30,000
5	Microfilm Program		7,700
6	Total	\$	1,126,018

16—*Treasurer's Office—School Building Sinking Fund*

Acct. No. 165

1 Total\$ 15,000,000

2 Any unexpended balance remaining in the
 3 appropriation for "Treasurer's Office—School
 4 Building Sinking Fund" at the close of the

5 fiscal year 1977-78 is hereby reappropriated
6 for expenditure during the fiscal year 1978-79.

17—*Municipal Bond Commission*

Acct. No. 170

1	Personal Services	\$	57,417
2	Current Expenses		11,525
3	Equipment		450
4	Total	\$	69,392

18—*State Tax Department*

Acct. No. 180

1	Personal Services	\$	3,451,266
2	Current Expenses		2,419,855
3	Equipment		40,000
4	Circuit Breaker Reimbursement		50,000
			-
5	Total	\$	5,961,121

6 The above appropriation "Circuit Breaker Re-
7 imbursement" is to be used in accordance
8 with Engrossed House Bill No. 751, 1972 Reg-
9 ular Session of the Legislature.

19—*State Tax Department—
Property Appraisal*

Acct. No. 185

1	Personal Services	\$	1,699,883
2	Other Expenses		1,062,682
3	Reimbursement to Counties for Computeriza- 4 tion		80,000
5	Equipment		10,210
6	Total	\$	2,852,775

7 Any unexpended balance remaining in the
8 "Property Appraisal Account" at the close
9 of the fiscal year 1977-78 is hereby reappro-
10 priated for expenditure during the fiscal year
11 1978-79.

20—Department of Finance and Administration

Acct. No. 210

1	Personal Services	\$ 2,532,654
2	Current Expenses	720,596
3	Repairs and Alterations	215,000
4	Equipment	18,000
5	Postage	700,000
6	Records Management	63,000
7	State Agency Surplus Property	90,622
8	Utilities	550,000
9	Fire Service Fee	73,965
10	Building Equipment and Supplies	25,000
11	Major Building Repairs	940,000
12	Total	\$ 5,928,837

13 The Workmen's Compensation Commission,
14 Department of Welfare, Public Service Com-
15 mission, Department of Natural Resources,
16 Department of Motor Vehicles, State Depart-
17 ment of Highways, State Health Department
18 and State Tax Department—Income Tax Di-
19 vision shall reimburse the Postage appro-
20 priation of the Department of Finance and
21 Administration monthly for all meter service.
22 Any spending unit operating from Special
23 Revenue or receiving reimbursement for
24 postage costs from the Federal Government
25 shall refund to the Postage account of the
26 Department of Finance and Administration
27 such amounts. Should this appropriation for
28 Postage be insufficient to meet the mailing
29 requirements of the State spending units as
30 set out above, any excess postage meter ser-
31 vice requirements shall be a proper charge
32 against the units, and each spending unit
33 shall refund to the Postage appropriation of
34 the Department of Finance and Administra-
35 tion any amounts required for the Depart-
36 ment for postage in excess of this appropria-
37 tion.

38 Any unexpended balance remaining at the
 39 "Postage Account" at the close of the fiscal
 40 year 1977-78 is hereby reappropriated for ex-
 41 penditure during the fiscal year 1978-79.

42 Any unexpended balance remaining at the
 43 close of the fiscal year 1977-78 for "Major
 44 Building Repairs" is hereby reappropriated
 45 for expenditure during the fiscal year 1978-
 46 79 (Major Building Repairs to include main-
 47 tenance and repairs to Governor's Mansion).

48 State Department of Highways shall reimburse
 49 the appropriation of the Department of Fi-
 50 nance and Administration monthly for all
 51 actual expenses incurred pursuant to the
 52 provisions of Chapter 17, Article 2-A, Section
 53 13 of the Code of West Virginia.

21—*State Board of Insurance*

Acct. No. 225

1 Personal Services	\$	60,000
2 Current Expenses		18,000
3 Equipment		3,500
4 Insurance Fund		2,090,000
5 Total	\$	2,171,500

6 The above appropriation on line 4, is for the
 7 purpose of paying premiums, self-insurance
 8 losses, loss adjustment expenses and loss pre-
 9 vention engineering fees for property, cas-
 10 uality and fidelity insurance for the various
 11 State agencies. Should this appropriation be
 12 insufficient to meet the requirements of the
 13 State spending units, any excess costs shall
 14 be a proper charge against the units and each
 15 spending unit shall reimburse to the Board
 16 of Insurance any amounts required for that
 17 department for costs in excess of this appro-
 18 priation.

19 Any and all of the funds appropriated for "In-
 20 surance Fund", may be transferred to a
 21 "special account" for the payment of premi-
 22 ums, self-insurance losses, loss adjustment
 23 expenses and loss prevention engineering
 24 fees.

25 Any or all of the funds appropriated for "In-
 26 surance Fund" may be transferred to a spe-
 27 cial account for disbursement for payment
 28 of premiums and insurance losses.

LEGAL

22—Attorney General

Acct. No. 240

1	Salary of Attorney General	\$	35,000
2	Other Personal Services		1,053,911
3	Current Expenses		165,000
4	Equipment		29,000
5	To protect the resources or tax structure of the		
6	State in controversies or legal proceedings		
7	affecting same ----		3,250
8	Consumer Protection		193,556
9	Total	\$	1,481,717

10 When legal counsel or secretarial help is ap-
 11 pointed by the Attorney General, for any
 12 State spending unit, this account shall be re-
 13 imbursed from such unit's appropriate ac-
 14 count in an amount agreed upon by the
 15 Attorney General and the proper authority of
 16 said spending unit.

17 The above appropriation for "Consumer Pro-
 18 tection" is to be used in accordance with
 19 Enrolled Senate Bill No. 240, 1974 Regular
 20 Session of the Legislature.

23—Commission on Uniform State Laws

Acct. No. 245

1	Unclassified—Total	\$	8,000
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- 2 To pay expenses of members of the Commission
3 on Uniform State Laws.

INCORPORATING AND RECORDING

24—*Secretary of State*

Acct. No. 250

1	Salary of Secretary of State	\$	30,000
2	Other Personal Services		235,478
3	Current Expenses		87,032
4	Equipment		18,000
5	Regulation of Charitable Fund Raising		47,800
6	Certification of Primary and General Elections		4,200
7	Total	\$	422,510
8	Any unexpended balance remaining in "Publi-		
9	cation of State Register" at the close of the		
10	fiscal year 1977-78 is hereby reappropriated		
11	for expenditure during the fiscal year 1978-79.		

EDUCATIONAL

25—*State Department of Education*

Acct. No. 277

1	Teacher Education Program—Total	\$	131,250
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26—*West Virginia Board of Regents (Control)*

Acct. No. 279

1	Personal Services	\$	80,458,468
2	Current Expenses		15,644,806
3	Repairs and Alterations		1,793,134
4	Equipment		3,808,698
5	Veterinary, Optometry, Podiatry and Archi-		
6	tectural Tuition		646,100
7	Bureau of Coal Research		1,000,000
8	National Research Center for coal and energy		1,000,000
9	New Programs		322,936
10	Unclassified		100,000
11	Title I—Matching Funds		133,000
12	Educational T. V.		928,146

13	Scholarship Program	2,500,000
14	Awareness Program	57,151
15	Facilities and Scholarship Program	78,997
16	Purchase and repair of equipment at Kearneys-	
17	ville Experimental Farm	150,000
18	Washington Carver Camp	100,000
19	Community and Development Research (Glen-	
20	ville)	34,785
21	Center for Economic Action (Concord)	61,751
22	Total	\$108,817,972

23 Any unexpended balance remaining in the ap-
 24 propriation "Moving of WWVU-TV" at the
 25 close of the fiscal year 1977-78 is hereby re-
 26 appropriated for expenditure during the fiscal
 27 year 1978-79.

27—*West Virginia Board of Regents*

Acct. No. 280

1	Personal Services	\$ 462,000
2	Current Expenses	140,180
3	Equipment	1,500
4	Total	\$ 603,680

28—*West Virginia College of Osteopathic Medicine*

Acct. No. 281

1	Unclassified—Total	\$ 3,069,840
2	Any unexpended balance remaining in this ap-	
3	propriation at the close of the fiscal year 1977-	
4	78 is hereby reappropriated for expenditure	
5	during the fiscal year 1978-79.	

29—*Marshall University—Medical School*

Acct. No. 284

1	Unclassified—Total	\$ 1,834,308
2	Any unexpended balance remaining in this ap-	
3	propriation at the close of the fiscal year	

4 1977-78 is hereby reappropriated for expendi-
5 ture during the fiscal year 1978-79.

30—*West Virginia University—Medical School*

Acct. No. 285

1	Personal Services	\$ 9,024,019
2	Current Expenses	4,828,000
3	Repairs and Alterations	400,000
4	Equipment	250,000
5	Family Practice Residency Support Program ..	400,000
6	Intern and Residency Support Programs for	
7	Community Hospitals	825,000
8	Total	\$ 15,727,019
9	To be transferred to the West Virginia Univer-	
10	sity—Medical School Fund upon the requisiti-	
11	tion of the Governor.	

31—*Department of Education*

Acct. No. 286

1	Personal Services	\$ 898,630
2	Current Expenses	641,825
3	Equipment	11,000
4	National Defense Education Act	513,412
5	Statewide Testing Program	131,665
6	Safety Education—Aid to Counties	210,000
7	State Aid to Children's Home	80,000
8	Regional Education Service Agency	400,000
9	Project 0629-061, Identification & Remediation	
10	of Learning Disabilities	50,000
11	Project 0629-062, Diagnosis and Remediation	
12	of Learning Disabilities	90,000
13	Project 0629-067, Early Learning and Child	
14	Care	62,700
15	Project 0620-077, Early Learning and Child	
16	Care	90,000
17	Project 0629-078, Early Learning and Child	
18	Care	90,000
19	Total	\$ 3,269,232

20 The above appropriation includes the State
 21 Board of Education and their executive
 22 offices.

23 Any part or all of the appropriation for "Na-
 24 tional Defense Education Act" may be trans-
 25 ferred to a Special Revenue Fund for the
 26 purpose of matching Federal Funds for this
 27 program.

32—*State Department of Education—School Lunch Program*

Acct. No. 287

1	Personal Services	\$	135,563
2	Current Expenses		36,700
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		1,918,755
5	Total	\$	2,091,018

33—*State Board of Education—Vocational Division*

Acct. No. 289

1	Personal Services	\$	238,474
2	Current Expenses		69,919
3	Equipment		7,000
4	Vocational Aid		8,362,753
5	Adult Basic Education		700,000
6	Replacement of Equipment		750,000
7	Total	\$	10,128,146

8 Any unexpended balance remaining in the ap-
 9 propriation for "Building Construction" at
 10 the close of the fiscal year 1977-78 is hereby
 11 reappropriated for expenditure during the
 12 fiscal year 1978-79.

34—*State Department of Education—Professional Educators*

Acct. No. 290

1	Total	\$	42,339,386
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35—*Educational Broadcasting Authority*

Acct. No. 291

1	Personal Services	\$	62,499
2	Current Expenses		34,233
3	Equipment		2,500
4	Regional ETV		1,572,094
5	Educational T.V.		—
6	Total	\$	1,671,326

7 “Regional ETV” is for participation in the construction and operation of Regional ETV stations by Marshall University, Concord College, Bluefield State College, West Virginia Institute of Technology, and West Virginia State College, and the acquisition of a new FM radio station to serve the northern panhandle; and such funds may be transferred to special revenue accounts for matching County and/or Federal Funds.

36—*State Board of Education—Vocational Division*

Acct. No. 294

1	Personal Services	\$	27,072
2	Other Expenses		522,928
3	Total	\$	550,000

4 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

37—*State Department of Education—State Aid to Schools*

Acct. No. 295

1	Professional Educators	\$215,066,072
2	Other Personnel	43,013,214
3	Fixed Charges	20,775,383
4	Transportation Charges	11,013,013
5	Administration	2,150,665

6	Other Current Expenses	25,807,929
7	National Average Attainment	17,967,721
8	Program Improvement	1,731,963
9	Increased Enrollment	1,500,000
10	Subtotal	\$339,025,960
11	Less Local Share	52,749,118
12	Total	\$286,276,842

38—*Department of Education—Aid for Exceptional Children*

Acct. No. 296

1	Personal Services	\$ 204,000
2	Current Expenses	94,400
3	Out-of-State Instruction	382,000
4	Aid to Counties	6,600,000
		-
5	Total	\$ 7,280,400

6 The appropriation for "Out-of-State Instruction"
 7 tion" may be expended to provide instruction,
 8 care and maintenance for educable persons
 9 who have multiple handicaps and for whom
 10 the state provides no facilities.

39—*State Board of Education—Early Childhood Aides*

Acct. No. 297

1	Early Childhood Aides—Total	\$ 3,099,096
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40—*Teachers' Retirement Board*

Acct. No. 298

1	Teachers Retirement Fund	\$ 29,000,000
2	Expense Fund	35,000
3	Total	\$ 29,035,000

41—*Department of Education*

Acct. No. 299

1	To fund minimum salaries for Support Per-	
2	sonnel—Total	\$ 26,174,289

42—*West Virginia Schools for the Deaf and the Blind*

Acct. No. 333

1	Personal Services _____	\$	2,119,676
2	Current Expenses _____		498,952
3	Repairs and Alterations _____		109,180
4	Equipment _____		95,000
5	Total _____	\$	2,822,808

43—*State FFA-FHA Camp and Conference Center*

Acct. No. 336

1	Personal Services _____	\$	99,225
2	Current Expenses _____		25,000
3	Repairs and Alterations _____		25,000
4	Equipment _____		23,000
5	Total _____	\$	172,225

44—*West Virginia Library Commission*

Acct. No. 350

1	Personal Services _____	\$	709,325
2	Current Expenses _____		157,000
3	Repairs and Alterations _____		3,500
4	Equipment _____		5,000
5	Grants-in-Aid _____		2,550,000
6	Library Matching Fund (Construction)		1,350,000
7	Books and Periodicals _____		195,000
8	Total _____	\$	4,969,825
9	Any unexpended balance remaining in the ap-		
10	propriation for "Library Matching Fund" at		
11	the close of the fiscal year 1977-78 is hereby		
12	reappropriated for expenditure during the		
13	fiscal year 1978-79.		

45—*Department of Culture and History*

Acct. No. 351

1	Personal Services _____	\$	813,712
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2	Current Expenses	628,205
3	Repairs and Alterations	25,000
4	Equipment	25,000
5	Mt. State Forest Festival	25,000
6	Theatre Arts of West Virginia	230,000
7	Alpine Festival	7,500
8	Arts and Humanities Fund	460,000
9	West Virginia Water Festival	8,000
10	Tri-County Fair	5,000
11	Oil and Gas Festival	3,000
12	White Water Weekend	3,000
13	Calhoun County Wood Festival	2,500
14	New Martinsville Regatta	2,500
15	Braxton County Regatta	4,000
16	Cherry River Festival	2,000
17	Mother's Day Founders Festival	15,000
18	Mt. Heritage Arts and Crafts Fair	5,000
19	Wellsburg July 4th Celebration	2,500
20	Sternwheel Regatta	10,000
21	Sistersville Outboard Regatta	2,000
22	Ohio River Festival	2,500
23	Ripley 4th of July Festival	2,500
24	King Coal Festival	1,000
25	General Adam Stephen Memorial Association ..	25,000
26	Prickett's Fort State Park	75,000
27	Independence Hall, Wheeling, West Virginia ..	200,000
28		
29	Total	\$ 2,584,917

30 The above appropriations, Mt. State Forest Festival,
31 Theatre Arts of West Virginia, West Virginia Water Festi-
32 val, Tri-County Fair, Oil and Gas Festival, White Water
33 Weekend, Calhoun County Wood Festival, New Martins-
34 ville Regatta, Braxton County Regatta, Cherry River Festi-
35 tival, Mothers' Day Founders Festival, Mt. Heritage Arts
36 and Crafts Fair, Wellsburg July 4th Celebration, Stern-
37 wheel Regatta, Sistersville Outboard Regatta, Ohio River
38 Festival, Ripley 4th of July Festival and King Coal Festi-
39 val, shall be expended only upon authorization of the
40 Director of the Department of Culture and History and in

41 accordance with the provisions of Chapter 5A and Chapter
42 12, Article 3 of the Code of West Virginia.

43 All Federal moneys received as reimbursement to the
44 Science and Culture Center, for moneys expended from
45 the General Revenue Fund for Arts and Humanities are
46 hereby reappropriated for the purposes as originally made,
47 including Personal Services, Current Expenses and Equip-
48 ment.

49 Any unexpended balance remaining in the appropriation
50 for "Independence Hall, Wheeling, West Virginia" at the
51 close of the fiscal year 1977-78 is hereby reappropriated for
52 expenditure during the fiscal year 1978-79.

CORRECTION

46—*Department of Corrections—
Probation and Parole*

Acct. No. 365

1	Salaries of Members of Board of Probation		
2	and Parole	\$	48,000
3	Other Personal Services		23,968
4	Current Expenses		13,300
5	Total	\$	85,268

47—*Department of Corrections—
Community Service
Northern Region*

Acct. No. 366

1	Personal Services	\$	236,516
2	Current Expenses		59,407
3	Equipment		750
4	Total	\$	296,673

48—*Department of Corrections—
Community Service
Southern Region*

Acct. No. 367

1	Personal Services	\$	462,527
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APPROPRIATIONS

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2	Current Expenses	160,000
3	Repairs and Alterations	1,500
4	Equipment	3,500
5	Total	\$ 627,527

49—*Department of Corrections*

Acct. No. 368

1	Salary of Commissioner	\$ 30,000
2	Other Personal Services	373,664
3	Current Expenses	136,500
4	Repairs and Alterations	5,200
5	Equipment	3,000
6	Total	\$ 548,364

50—*Anthony Center*

Acct. No. 369

1	Personal Services	\$ 429,744
2	Current Expenses	167,100
3	Repairs and Alterations	16,700
4	Equipment	9,600
5	Total	\$ 623,144

51—*West Virginia Industrial School for Boys*

Acct. No. 370

1	Personal Services	\$ 960,201
2	Current Expenses	290,073
3	Repairs and Alterations	74,000
4	Equipment	40,000
5	Total	\$ 1,364,274

52—*Davis Center*

Acct. No. 371

1	Personal Services	\$ 363,782
2	Current Expenses	148,000

3	Repairs and Alterations _____	18,950
4	Equipment _____	28,800
5	Total _____	\$ 559,532

53—*West Virginia Industrial Home for Girls*

Acct. No. 372

1	Personal Services _____	\$ 450,000
2	Current Expenses _____	140,000
3	Repairs and Alterations _____	9,000
4	Equipment _____	11,500
5	Total _____	\$ 610,500

54—*Leckie Center*

Acct. No. 373

1	Personal Services _____	\$ 377,891
2	Current Expenses _____	160,000
3	Repairs and Alterations _____	19,000
4	Equipment _____	22,000
5	Total _____	\$ 578,891

55—*West Virginia State Prison for Women*

Acct. No. 374

1	Personal Services _____	\$ 367,906
2	Current Expenses _____	136,900
3	Repairs and Alterations _____	74,000
4	Equipment _____	28,000
5	Total _____	\$ 606,806

56—*West Virginia Penitentiary*

Acct. No. 375

1	Personal Services _____	\$ 2,510,162
2	Current Expenses _____	1,301,875
3	Repairs and Alterations _____	77,000
4	Equipment _____	95,000

APPROPRIATIONS

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5	Capital Improvements	75,000
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6	Total	\$ 4,059,037
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57—Huttonsville Correctional Center

Acct. No. 376

1	Personal Services	\$ 1,519,449
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2	Current Expenses	980,000
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3	Repairs and Alterations	79,000
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4	Equipment	37,250
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5	Total	\$ 2,615,699
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HEALTH AND WELFARE

58—State Health Department

Acct. No. 400

Administration

1	Personal Services	\$ 850,252
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2	Current Expenses	503,441
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3	Equipment	20,649
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4	Subtotal	1,374,342
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Preventive Health

5	Personal Services	924,880
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6	Current Expenses	840,409
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7	Equipment	120,117
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8	Subtotal	1,885,406
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Alcoholism and Drug Abuse

9	Personal Services	528,789
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10	Current Expenses	52,352
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11	Repairs and Alterations	661
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12	Subtotal	581,802
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Maternal and Child Health

13	Personal Services	797,402
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14	Current Expenses	1,279,267
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Ch. 4]	APPROPRIATIONS	49
15	Equipment _____	192,620
16	Subtotal	2,269,289
<i>Environmental Health</i>		
17	Personal Services _____	657,833
18	Current Expenses _____	201,081
19	Equipment _____	19,055
20	Subtotal	877,969
<i>Community Service</i>		
21	Personal Services _____	573,287
22	Current Expenses _____	206,195
23	Repairs and Alterations _____	3,100
24	Equipment _____	2,620
25	State Aid to Local and Regional Agencies _____	2,100,000
26	Contracts for Community Mental Health-Mental	
27	Retardation Services _____	8,700,000
28	Subtotal	11,585,202
<i>Research and Statistics</i>		
29	Personal Services _____	211,179
30	Current Expenses _____	15,272
31	Equipment _____	100
32	Subtotal	226,551
<i>Institutional Service</i>		
33	Personal Services _____	356,882
34	Current Expenses _____	40,600
35	Equipment _____	5,500
36	Subtotal	402,982
<i>State Hygienic Laboratory</i>		
37	Personal Services _____	279,789
38	Current Expenses _____	226,340
39	Equipment _____	14,950
40	Subtotal _____	521,079

Certification, Licensure and Inspection

41	Personal Services	138,707
42	Current Expenses	34,868
43	Equipment	100
44	Subtotal	173,675

Office of Chief Medical Examiner

45	Personal Services	305,746
46	Current Expenses	630,424
47	Repairs and Alterations	2,500
48	Equipment	10,000
49	Subtotal	948,670

Mental Retardation

50	Personal Services	80,000
51	Current Expenses	70,000
52	Subtotal	150,000

Emergency Medical Services

53	Personal Services	193,700
54	Current Expenses ..	1,226,784
55	Equipment	4,000
56	Subtotal	1,424,484

57 Total.....\$ 22,421,451

58 Any unexpended balance remaining in the
 59 appropriation for "Mental Health Center—
 60 Princeton," "Logan-Mingo Area Mental
 61 Health Center," and "Home Health Services"
 62 at the close of the fiscal year 1977-78 is here-
 63 by reappropriated for expenditure during the
 64 fiscal year 1978-79.

59—Solid Waste Disposal

Acct. No. 402

1 Personal Services\$ 71,052

2	Current Expenses	53,922
3	Equipment	822
4	Programs for Elderly	1,000,000
5	Senior Citizens Centers	500,000
		<hr/>
6	Total	\$ 1,633,021

7 The above appropriation "Senior Citizens Cen-
8 ters" shall be used for repair and renovation
9 of existing Senior Citizens Centers.

64—*Department of Welfare—West Virginia Children's Home*

Acct. No. 412

1	Personal Services	\$ 160,500
2	Current Expenses	94,182
3	Repairs and Alterations	17,600
4	Equipment	10,860
		<hr/>
5	Total	\$ 283,142

65—*Greenbrier School for Mentally Retarded Children*

Acct. No. 414

1	Personal Services	\$ 812,543
2	Current Expenses	206,379
3	Repairs and Alterations	100,000
4	Equipment	54,800
		<hr/>
5	Total	\$ 1,173,722

66—*State Health Department—Mental Hospitals*

Acct. No. 416

1	Personal Services	\$ 16,333,375
2	Current Expenses	5,138,907
3	Repairs and Alterations	630,280
4	Equipment	328,421
5	Student Nurse Affiliation Program	
6	(Huntington)	55,550
7	Psychiatric Training Center—Student Nurses	
8	(Weston)	165,375

9	Lakin State Hospital—	
10	Boiler Replacement	105,000
11	Huntington State Hospital—	
12	Supervised Alarm Systems and	
13	Smoke Detectors	30,000
14	Colin Anderson Center—	
15	New Water Well .	43,000
16	Huntington State Hospital—	
17	Sprinkler System	287,782
18	Total	\$ 23,117,690

19 The Director of Health, prior to the beginning
 20 of the fiscal year, shall file with the Legisla-
 21 tive Auditor an expenditure schedule for
 22 each formerly separate spending unit which
 23 has been consolidated into the above account
 24 and which receives a portion of the above ap-
 25 propriation. He shall also, within fifteen
 26 days after the close of each six-month period
 27 of said fiscal year, file with the Legislative
 28 Auditor an itemized report of expenditures
 29 made during the preceding six-month period.
 30 Such report shall include the total of ex-
 31 penditures made under each of line items
 32 1, 2, 3 and 4 above.

67—*Colin Anderson Center*

Acct. No. 419

1	Personal Services	\$ 5,690,466
2	Current Expenses	1,032,875
3	Repairs and Alterations	367,000
4	Equipment	217,646
5	Total	\$ 7,307,987

68—*Fairmont Emergency Hospital*

Acct. No. 425

1	Personal Services	\$ 563,483
2	Current Expenses	256,800

APPROPRIATIONS

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3	Repairs and Alterations _____	10,100
4	Equipment _____	31,965
5	Total _____	\$ 862,348

69—*Welch Emergency Hospital*

Acct. No. 426

1	Personal Services _____	\$ 1,033,275
2	Current Expenses _____	375,000
3	Repairs and Alterations _____	90,000
4	Equipment _____	70,000
5	Total _____	\$ 1,568,275

70—*Andrew S. Rowan Memorial Home*

Acct. No. 427

1	Personal Services _____	\$ 754,162
2	Current Expenses _____	406,036
3	Repairs and Alterations _____	58,700
4	Equipment _____	53,074
5	Total _____	\$ 1,271,972

71—*Hopemont State Hospital*

Acct. No. 430

1	Personal Services _____	\$ 3,227,569
2	Current Expenses _____	703,700
3	Repairs and Alterations _____	57,200
4	Equipment _____	70,650
5	Total _____	\$ 4,059,119

72—*Pinecrest State Hospital*

Acct. No. 431

1	Personal Services _____	\$2,894,243
2	Current Expenses _____	900,000
3	Repairs and Alterations _____	105,400

4	Equipment _____	34,300
5	Total _____	\$ 3,933,943

73—Denmar State Hospital

Acct. No. 432

1	Personal Services _____	\$ 1,972,551
2	Current Expenses _____	681,579
3	Repairs and Alterations _____	84,600
4	Equipment _____	150,700
5	Total _____	\$ 2,889,430

74—State Board of Education—Rehabilitation Division

Acct. No. 440

1	Personal Services _____	\$ 1,970,366
2	Current Expenses _____	520,500
3	Rehabilitation Center _____	1,986,352
4	Case Services _____	2,456,424
5	Supervisory Services for Vending Stand Pro-	
6	gram for Blind _____	190,982
7	Training and Special Projects _____	666,286
8	Social Security Matching Fund _____	204,995
9	Total _____	\$ 7,995,905

BUSINESS AND INDUSTRIAL RELATIONS

75—Bureau of Labor and Department of
Weights and Measures

Acct. No. 450

1	Personal Services _____	\$ 895,357
2	Current Expenses _____	233,363
3	Equipment _____	89,000
4	Labor Management Advisory Council _____	25,000
5	Total _____	\$ 1,242,720

76—*Interstate Mining Compact Commission*

Acct. No. 451

1	Total _____	\$ 10,000
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77—*Department of Mines*

Acct. No. 460

1	Personal Services _____	\$ 2,674,984
2	Current Expenses _____	626,000
3	Equipment _____	100,450
4	Special Mine Drainage Program _____	50,000
5	Miner Training, Education and Certification ...	170,000
6	Board of Coal Mine Health and Safety _____	15,000
7	Subsidence—Federal Matching _____	—0—
8	Total _____	\$ 3,636,434

9 Any unexpended balance remaining in the ap-
 10 propriation for "Subsidence-Federal Match-
 11 ing" at the close of the fiscal year 1977-78 is
 12 hereby reappropriated for expenditure dur-
 13 ing the fiscal year 1978-79.

78—*Ohio River Basin Commission*

Acct. No. 469

1	Total _____	\$ 21,600
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79—*Council of State Governments*

Acct. No. 472

1	Total _____	\$ 29,290
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80—*Interstate Commission on Potomac River Basin*

Acct. No. 473

1	West Virginia's contribution to Potomac River	
2	Basin Interstate Commission _____	\$ 12,450

81—*Ohio River Valley Water Sanitation Commission*

Acct. No. 474

1	West Virginia's contribution to the Ohio River	
2	Valley Water Sanitation Commission _____	\$ 40,575

82—*Southern Regional Education Board*

Acct. No. 475

1	West Virginia's contribution to Southern Re-		
2	gional Education Board	\$	64,000
3	To be expended upon requisition of the Governor.		

83—*West Virginia Air Pollution Commission*

Acct. No. 476

1	Personal Services	\$	411,188
2	Current Expenses		145,520
3	Equipment		27,500
4	Total	\$	584,208

84—*Interstate Education Compact*

Acct. No. 477

1	West Virginia's contribution to Interstate Edu-		
2	cation Compact	\$	14,250
3	To be expended upon requisition of the Gov-		
4	ernor.		

85—*Department of Banking*

Acct. No. 480

1	Personal Services	\$	363,450
2	Current Expenses		160,350
3	Equipment		5,000
4	Total	\$	528,800

86—*West Virginia State Aeronautics Commission*

Acct. No. 485

1	Personal Services	\$	40,792
2	Current Expenses		24,075
3	Equipment		2,000
4	Aerial Markers		5,000
5	Airport Matching Fund		500,000
6	Civil Air Patrol Expenses		89,000
7	Total	\$	660,867

8 Any unexpended balance remaining in the ap-
 9 propriation "Airport Matching" at the close
 10 of the fiscal year 1977-78 is hereby reappro-
 11 priated for expenditure during fiscal year
 12 1978-79.

87—*West Virginia Nonintoxicating Beer Commission*

Acct. No. 490

1	Personal Services	\$	268,652
2	Current Expenses		81,004
3	Equipment		4,992
4	Total	\$	354,648

88—*West Virginia Racing Commission*

Acct. No. 495

1	Personal Services	\$	415,645
2	Current Expenses		63,425
3	Equipment		2,000
4	Total	\$	481,070

AGRICULTURE

89—*Department of Agriculture*

Acct. No. 510

1	Salary of Commissioner	\$	32,500
2	Other Personal Services		1,259,546
3	Current Expenses		684,724
4	Equipment		46,875
5	Marijuana and Multiflora Rose Eradication		
6	Program		—0—
7	Total	\$	2,023,645

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

11 Any unexpended balance remaining in the
 12 appropriation for "Marijuana and Multiflora

- 13 Rose Eradication Program" at the close of the
 14 fiscal year 1977-78 is hereby reappropriated
 15 for expenditure during the fiscal year 1978-79.

90—*Farm Management Commission*

Acct. No. 511

1 Personal Services	\$ 773,447
2 Current Expenses	700,000
3 Repairs and Alterations	270,000
4 Equipment	404,065
5 Building & Alterations to Buildings	160,000
6 Total	\$ 2,307,512

- 7 Any appropriated balance remaining in the
 8 appropriation "Unclassified" at the close of
 9 the fiscal year 1977-78 is hereby reappro-
 10 priated for expenditure during the fiscal year
 11 1978-79.

91—*Department of Agriculture—*

Soil Conservation Committee

Acct. No. 512

1 Personal Services	\$ 244,755
2 Current Expenses	87,477
3 Watershed Program	50,000
4 Total	\$ 382,232

- 5 Any unexpended balance remaining in the
 6 appropriation for "Watershed Program,"
 7 "Mud River Flood Control Project" and
 8 "Channelization of Kelley's Creek" herein-
 9 after known as "Stream Channelization" at
 10 the close of the fiscal year 1977-78 is hereby
 11 reappropriated for expenditure during the
 12 fiscal year 1978-79.

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

Acct. No. 513

1	Personal Services	\$	558,400
2	Current Expenses		115,700
3	Total	\$	674,100

4 Any part or all of this appropriation may be
5 transferred to Special Revenue Fund for the
6 purpose of matching Federal Funds for the
7 above-named program.

93—*Department of Agriculture—Meat Inspection*

Acct. No. 514

1	Personal Services	\$	281,563
2	Current Expenses		109,132
3	Total	\$	390,695

4 Any part or all of this appropriation may be
5 transferred to Special Revenue Fund for the
6 purpose of matching Federal Funds for the
7 above-named program.

94—*Department of Agriculture—Agricultural Awards*

Acct. No. 515

1	Agricultural Awards	\$	70,000
2	Fairs and Festivals		134,450
3	Total	\$	204,450

CONSERVATION AND DEVELOPMENT

95—*Geological and Economic Survey*

Acct. No. 520

1	Personal Services	\$	615,376
2	Current Expenses		304,468
3	Repairs and Alterations		73,750

4	Equipment	94,500
5	Special Studies	650,000
6	Total	\$ 1,738,094

96—*Department of Natural Resources*

Acct. No. 565

1	Personal Services	\$ 5,919,466
2	Current Expenses	1,600,000
3	Repairs and Alterations	373,040
4	Equipment	436,566
5	Clarke-McNary Fire Prevention	700,000
6	Water Resources Board and Reclamation Board	
7	of Review	30,000
8	Implementation of Federal Surface Mine Legis-	
9	lation	425,000
10	Clean Water Act of 1977	400,000
11	Repairs, Replacement of Equipment and Fur-	
12	nishings on Existing Facilities	2,000,000
13	Debt Service	975,000
14	Special Works Program	350,000
15		
16	Laurel Lake Public Hunting and Fishing	70,000
17	Big Ugly Public Hunting Grounds	50,000
18	Cass Scenic Railroad (Operation)	80,000
19	Kanawha State Forest	435,000
20	Reeds Creek Hatchery	600,000
21	Big Ditch—Improvements ..	60,000
22	Total	\$ 14,504,072

23 Any unexpended balance remaining in the ap-
 24 propriations for "Park Improvements—Pipe-
 25 stem State Park," "Land Purchase—Laurel
 26 Lake and Facilities," "Little Beaver State
 27 Park," "Beartown State Park," "Watoga State
 28 Park," "Coopers Rock State Park," "Green-
 29 brier State Forest," "Kanawha State Forest,"
 30 "Seneca State Forest," "Moncove Lake Public
 31 Hunting and Fishing Area," "French Creek
 32 Game Farm," "Pleasants Creek Public Hunt-

33 ing and Fishing Area," "Plum Orchard Lake
34 Public Hunting and Fishing Area," "To ex-
35 amine structure of Laurel Lake—Mingo Co.,"
36 "Panther State Forest," "Piney Creek Water-
37 shed," "Bluestone State Park," "Tomlinson
38 Run State Park," "Area Improvements—Ber-
39 wind Lake Public Hunting and Fishing
40 Area," "Park Improvement Program," "Con-
41 struction, Development and Improvement of
42 sewage systems and water systems on state
43 forests, parks and recreation areas," and
44 Mine Coal Refuse Pile Removal and Recla-
45 mation" at the close of the fiscal year 1977-78
46 is hereby reappropriated for expenditure
47 during the fiscal year 1978-79.

48 Any or all funds appropriated for "Clarke-Mc-
49 Nary Fire Prevention" may be transferred to
50 Special Revenue Fund to match and aid Fed-
51 eral Funds.

52 The above appropriations for "Laurel Lake
53 Public Hunting and Fishing," "Big Ugly
54 Public Hunting Grounds," "Reeds Creek
55 Hatchery," "Big Ditch" and "Kanawha State
56 Forest" shall be used for capital improve-
57 ments.

97—*Public Land Corporation*

Acct. No. 566

1 Any unexpended balance remaining in the ap-
2 propriations for "Public Land Corporation,"
3 "Blennerhassett Island," and "National Track
4 and Field Hall of Fame" at the close of the
5 fiscal year 1977-78 is hereby reappropriated
6 for expenditure during the fiscal year 1978-79.

7 The appropriation for "National Track and
8 Field Hall of Fame," as designated in Chapter
9 8, Acts of the Legislature, First Extraordinary
10 Session, 1975, is hereby redesignated as fol-
11 lows: The purpose of this bill is to provide

12 state general revenue moneys to match Fed-
 13 eral Funds, county funds, municipal funds,
 14 board of education funds, or any combination
 15 thereof, for the establishment of the "Na-
 16 tional Track and Field Hall of Fame." Such
 17 moneys may be transferred to a special fund
 18 to match and aid Federal Funds or other of
 19 the aforesaid funds and for disbursement
 20 therefrom.

98—*Water Development Authority*

Acct. No. 567

1	Personal Services	\$ 117,537
2	Operating Expenses	47,067
3	Capital Outlay	2,559,000
4	Phase III Hardship Grants	2,000,000
		<hr/>
5	Total	\$ 4,723,604
6	Any unexpended balance remaining in the ap-	
7	propriation for "Capital Outlay" at the close	
8	of the fiscal year 1977-78 is hereby reappro-	
9	priated for expenditure during the fiscal year	
10	1978-79.	

99—*West Virginia Railroad Maintenance Authority*

Acct. No. 569

1	Personal Services	\$ 66,566
2	Current Expenses	60,247
3	Equipment	1,766
4	South Branch and Greenbrier Line Sub Div.	300,000
		<hr/>
5	Total	\$ 428,579
6	Any unexpended balance remaining in the	
7	appropriation "South Branch Line" at the	
8	close of the fiscal year 1977-78 is hereby re-	
9	appropriated for expenditure during the 1978-	
10	79 fiscal year.	

PROTECTION

100—*Department of Public Safety*

Acct. No. 570

1	Personal Services	\$ 10,139,268
2	Current Expenses	3,828,082
3	Repairs and Alterations	242,000
4	Equipment	1,706,821
5	Emergency Fund	10,000
6	Total	\$ 15,926,171

101—*Adjutant General—State Militia*

Acct. No. 580

1	Personal Services	\$ 179,996
2	Current Expenses	401,597
3	Repairs and Alterations	36,000
4	Equipment	16,700
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances	95,360
7	Property Maintenance	574,078
8	State Armory Board	1,572,000
9	College Education Fund	150,000
10	Total	\$ 3,025,731

MISCELLANEOUS BOARDS AND COMMISSIONS

102—*West Virginia Civil Service System*

Acct. No. 584

1	Personal Services	\$ 579,134
2	Current Expenses	300,000
3	Employee Classification Program	170,000
4	Total	\$ 1,049,134

- 5 The director shall maintain accurate records
6 reflecting the cost of administering the pro-
7 visions of this appropriation. At the close of
8 each quarter-year period, he shall summarize
9 the cost and shall bill each department, com-

10 mission, board or agency which receives sup-
 11 port from any funds other than General Rev-
 12 enue Fund for a prorata share of the adminis-
 13 trative cost based on the relationship between
 14 the quarterly-average number of employees
 15 in the service of such department, commis-
 16 sion, board or agency and the quarterly-
 17 average number of employees in the service
 18 of all the departments, commissions, boards
 19 and agencies of the state for the appropriate
 20 calendar quarter.

21 This reimbursement is to be deposited in the
 22 General Revenue Fund.

103—*West Virginia State Board of Land Surveyors*

Acct. No. 585

1 To pay the per diem of members and other		
2 general expenses	\$	12,000
3 From Collections		12,000

104—*State Board of Professional Foresters*

Acct. No. 586

1 To pay the per diem of members and other		
2 general expenses	\$	800
3 From Collections		800

105—*West Virginia Board of Examiners for Practical Nurses*

Acct. No. 587

1 To pay the per diem of members and other		
2 general expenses	\$	67,000
3 From Collections		67,000

106—*State Board of Chiropractic Examiners*

Acct. No. 588

1 To pay the per diem of members and other		
2 general expenses	\$	2,000
3 From Collections		2,000

107—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other		
2 general expenses	\$	62,000
3 From Collections		62,000

108—*State Board of Osteopathy*

Acct. No. 591

1 To pay the per diem of members and other		
2 general expenses	\$	6,000
3 From Collections		6,000

109—*State Board of Embalmers and Funeral Directors*

Acct. No. 593

1 To pay the per diem of members and other		
2 general expenses	\$	35,100
3 From Collections		35,100

110—*State Board of Registration for Professional Engineers*

Acct. No. 594

1 To pay the per diem of members and other		
2 general expenses	\$	90,000
3 From Collections		90,000

111—*State Board of Architects*

Acct. No. 595

1 To pay the per diem of members and other		
2 general expenses	\$	14,000
3 From Collections		14,000

112—*State Veterinary Board*

Acct. No. 596

1 To pay the per diem of members and other		
2 general expenses	\$	3,500
3 From Collections		3,500

113—*Human Rights Commission*

Acct. No. 598

1	Personal Services	\$	250,500
2	Current Expenses _____		139,000
3	Equipment _____		10,000
4	Total _____	\$	399,500

114—*West Virginia State Board of Sanitarians*

Acct. No. 599

1	To pay the per diem of members and other		
2	general expenses _____	\$	800
3	From Collections _____		800

115—*West Virginia Public Employees Retirement Board*

Acct. No. 614

1	Employers Accumulation Fund _____	\$	8,000,000
2	Expenses Fund _____		113,224
3	Total _____	\$	8,113,224

4 The above appropriation is intended to cover
5 the state's share of West Virginia Public Em-
6 ployee's Retirement coverage for those de-
7 partments operating from General Revenue
8 Fund. The State Department of Highways,
9 Department of Motor Vehicles, Workmen's
10 Compensation Commission, Public Service
11 Commission, and other departments oper-
12 ating from Special Revenue Funds and/or
13 Federal Funds shall pay their proportionate
14 share of the retirement costs for their respec-
15 tive divisions. When specific appropriations
16 are not made, such payments may be made
17 from the balance in the various Special Rev-
18 enue Funds in excess of specific appropria-
19 tions.

116—*West Virginia Public Employees Insurance Board*

Acct. No. 615

1	Expense Fund _____	\$	113,000
2	Public Employees Health Insurance—State		
3	Contribution _____		24,460,688
4	Total _____	\$	24,573,688

5 The above appropriation is intended to cover
6 the state's share of Public Employees Health
7 Insurance costs for those spending units oper-
8 ating from General Revenue Fund. The State
9 Department of Highways, Department of Mo-
10 tor Vehicles, Workmen's Compensation Com-
11 mission, Public Service Commission, and
12 other departments operating from Special
13 Revenue Fund and/or Federal Funds shall
14 pay their proportionate share of the Public
15 Employees Health Insurance cost for their
16 respective divisions. When specific appropri-
17 ations are not made such payments may be
18 made from the balances in the various Spe-
19 cial Revenue Funds in excess of specific ap-
20 propriations.

117—*Insurance Commissioner*

Acct. No. 616

1	Personal Services _____	\$	440,000
2	Current Expenses _____		115,800
3	Equipment _____		5,100
4	Total _____	\$	560,900

118—*State Fire Commission*

Acct. No. 617

1	Personal Services _____	\$	415,603
2	Current Expenses _____		173,860
3	Repairs and Alterations _____		3,300

4	Equipment	25,015
5	Total	\$ 617,778

ROADS AND HIGHWAYS

119—*State Department of Highways*

Acct. No. 641

1	Total	\$ 75,000,000
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2 Any or all of the above appropriation may be
 3 transferred to the State Road Fund for dis-
 4 tribution.

1 **Sec. 2. Appropriations from other funds.**—From the
 2 funds designated there is hereby appropriated condition-
 3 ally upon the fulfillment of the provisions set forth in
 4 Chapter 5-A, Article 2 of the Code of West Virginia, the
 5 following amounts, as itemized, for expenditure during the
 6 fiscal year one thousand nine hundred seventy-nine:

120—*State Department of Highways*

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1	Maintenance Expressway, Trunkline and	
2	Feeder	\$ 67,000,000
3	Maintenance State Local Services	81,000,000
4	Inventory Revolving	2,000,000
5	Equipment Revolving	8,000,000
6	General Operations	16,000,000
7	Debt Service	78,000,000
8	Interstate Construction	107,228,000
9	Other Federal Aid Programs	91,495,000
10	Appalachian Program	71,376,000
11	Nonfederal Aid Construction	103,519,000
12	Total	\$625,618,000

13 It is the intent to appropriate and make avail-
 14 able for expenditure, the balances and all

15 revenues of the state road fund, including the
 16 proceeds from the sale of bonds, for the main-
 17 tenance, construction and reconstruction of
 18 state roads and for other purposes in accord-
 19 ance with the provisions of Chapter 17, Code
 20 of West Virginia, one thousand nine hundred
 21 thirty-one, as amended.

22 The State Commissioner of Highways shall
 23 have the authority to operate revolving
 24 funds within the state road fund for the op-
 25 eration and purchase of various types of
 26 equipment used directly and indirectly in the
 27 construction and maintenance of roads and
 28 for the purchase of inventories and materials
 29 and supplies.

30 There is hereby appropriated within the above
 31 items sufficient money for the payment of
 32 claims, accrued or arising during this budge-
 33 tary period, to be paid in accordance with
 34 Chapter 14, Article 2, Sections 17 and 18,
 35 Code of West Virginia, one thousand nine
 36 hundred thirty-one, as amended.

121—*Department of Motor Vehicles*

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 1,484,725
2	Current Expenses	1,786,700
3	Equipment	35,000
4	Purchase of License Plates	521,000
5	Social Security Matching	89,500
6	Public Employees Retirement Matching	141,050
7	Public Employees Health Insurance	89,385
8	Total	\$ 4,147,360

122—*State Tax Department—Gasoline Tax Division*

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$	380,662
2	Current Expenses		119,200
3	Equipment		3,500
4	Social Security Matching		23,000
5	Public Employees Retirement Matching		36,163
6	Public Employees Health Insurance		26,300
7	Total	\$	588,825

123—*Department of Education—Veterans Education*

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$	147,143
2	Other Expenses		49,026
3	Total	\$	196,169

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

7 Federal Funds in excess of the amounts hereby
 8 appropriated may be made available by bud-
 9 get amendment upon request of the State
 10 Superintendent of Schools and approval of
 11 the Governor for any emergency which might
 12 arise in the operation of this division during
 13 the fiscal year.

124—*Treasurer's Office*

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1	Abandoned and Unclaimed Property—Trust		
2	and Expense Fund	\$	70,900

125—*Real Estate Commission*

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	87,132
2	Current Expenses		30,400
3	Equipment		1,500
4	Social Security Matching		5,271
5	Public Employees Retirement Matching		8,200
6	Public Employees Health Insurance		3,500
7	Total	\$	136,003

8 The total amount of this appropriation shall be
 9 paid out of collections of license fees as pro-
 10 vided by law.

126—*West Virginia Racing Commission*

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1	Medical Expenses	\$	5,000
2	The total amount of this appropriation shall be		
3	paid from Special Revenue Fund out of col-		
4	lections of license fees and fines as provided		
5	by law.		

6 No expenditures shall be made from this ac-
 7 count except for hospitalization, medical
 8 care, and/or funeral expenses for persons
 9 contributing to this fund.

127—*Auditor's Office—Land Department Operating Fund*

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

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

128—*Department of Finance and Administration—
Division of Purchasing—Revolving Fund*

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	565,656
2	Current Expenses		100,000
3	Equipment		40,000
4	Social Security Matching		34,222
5	Public Employees Retirement Matching		53,737
6	Public Employees Health Insurance		38,000
7	Total	\$	831,615

8 The total amount of this appropriation shall be
9 paid from Special Revenue Fund as provided
10 by Chapter 5-A, Article 2 of the Code of West
11 Virginia.

12 The above appropriation includes salaries and
13 operating expenses.

14 There is hereby appropriated from this fund, in
15 addition to the above appropriation, the nec-
16 essary amount for the purchase of supplies
17 for resale.

129—*Department of Finance and Administration—
Information Systems Services Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	3,511,035
2	Current Expenses		5,892,365
3	Equipment		200,000
4	Social Security Matching		214,775
5	Public Employees Retirement Matching		337,250
6	Public Employees Health Insurance		200,000
7	Total	\$	10,355,425

8 The total amount of this appropriation shall be
9 paid from Special Revenue Fund out of col-

- 10 lections made by the Department of Finance
11 and Administration as provided by law.

130—*Department of Agriculture*

Acct. No. 818

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	286,310
2	Current Expenses		39,960
3	Social Security Matching		19,828
4	Public Employees Retirement Matching		31,136
5	Public Employees Health Insurance		14,400
6	Total	\$	391,634

- 7 The total amount of this appropriation shall be
8 paid from Special Revenue Fund out of col-
9 lections made by the Department of Agricul-
10 ture as provided by law.

131—*State Committee of Barbers and Beauticians*

Acct. No. 822

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	108,127
2	Current Expenses		52,217
3	Equipment		1,200
4	Social Security Matching		6,541
5	Public Employees Retirement Matching		10,272
6	Public Employees Health Insurance		7,137
7	Total	\$	185,494

- 8 The total amount of this appropriation shall be
9 paid from Special Revenue Fund out of col-
10 lections made by the State Committee of
11 Barbers and Beauticians as provided by law.

132—*Public Service Commission*

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	60,000
---	---------------------------------	----	--------

2	Other Personal Services	1,677,573
3	Current Expenses	571,500
4	Equipment	50,000
5	Social Security Matching	93,162
6	Public Employees Retirement Matching	146,288
7	Public Employees Health Insurance	66,200
8	Total.....	\$ 2,664,723

9 The total amount of this appropriation shall be
 10 paid from Special Revenue Fund out of col-
 11 lections for special license fees from public
 12 service corporations as provided by law.

13 Out of the above appropriation \$5,000 may be
 14 transferred to the State Water Resources
 15 Commission of the Department of Natural
 16 Resources for use in cooperation with the U.
 17 S. Geological Survey in a program of stream
 18 gauging.

133—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 129,862
2	Current Expenses	55,930
3	Equipment	3,500
4	Social Security Matching	6,300
5	Public Employees Retirement Matching	11,675
6	Public Employees Health Insurance	5,200
7	Total.....	\$ 212,467

8 The total amount of this appropriation shall be
 9 paid from Special Revenue Fund out of re-
 10 cepts collected for or by the Public Service
 11 Commission pursuant to and in the exercise
 12 of regulatory authority over pipeline com-
 13 panies.

134—Public Service Commission—Motor Carrier Division

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	724,004
2	Current Expenses		284,800
3	Equipment		7,500
4	Social Security Matching		37,950
5	Public Employees Retirement Matching		68,900
6	Public Employees Health Insurance		39,100
7	Total	\$	1,162,254

8 The total amount of this appropriation shall be
 9 paid from Special Revenue Fund out of re-
 10 cepts collected for or by the Public Service
 11 Commission pursuant to and in the exercise
 12 of regulatory authority over motor carriers
 13 as authorized by law.

135—Department of Natural Resources

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	2,866,733
2	Current Expenses		813,465
3	Repairs and Alterations		152,800
4	Equipment		200,000
5	Social Security Matching		177,461
6	Public Employees Retirement Matching		278,658
7	Public Employees Health Insurance		170,000
8	Land Purchase and Buildings		454,300
9	Total	\$	5,113,417

10 The total amount of this appropriation shall be
 11 paid from Special Revenue Fund out of fees
 12 collected by the Department of Natural Re-
 13 sources. Expenditures shall be limited to the
 14 amounts appropriated except for Federal
 15 Funds received and Special Funds collected

16 at state parks. Any unexpended balances re-
 17 maining in the prior appropriation item
 18 "Land Purchase and Buildings" are hereby
 19 reappropriated for expenditure, and all mon-
 20 eys accumulated in the fund at the close of
 21 fiscal year 1977-78 and available for capital
 22 improvements and land purchase purposes
 23 are hereby appropriated for expenditure in
 24 fiscal year 1978-79, all in accordance with
 25 Chapter 20, Article 2, Section 34, Code of
 26 West Virginia.

136—*Department of Public Safety—Inspection Fees*

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services _____	\$	320,724
2	Current Expenses _____		143,325
3	Repairs and Alterations _____		8,709
4	Equipment _____		22,300
5	Social Security Matching _____		2,483
6	Public Employees Health Insurance _____		18,315
7	Total.....	\$	515,547
8	The total amount of this appropriation shall be		
9	paid from Special Revenue Fund out of fees		
10	collected for inspection stickers as provided		
11	by law.		

137—*Board of Regents—West Virginia University—
 Special Capital Improvement Fund*

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	537,193
2	The total amount of this appropriation shall be		
3	paid from the nonrevolving Capital Improve-		
4	ment Fund created by the 1959 Legislature,		
5	as amended.		

6 Any unexpended balances remaining in the ap-
 7 appropriations for "Creative Arts, and
 8 Utilities, Roads and Parking" at the close of
 9 the fiscal year 1977-78 are hereby reappro-
 10 priated for expenditure during fiscal year
 11 1978-79.

138—Board of Regents—State System
 Special Capital Improvement Fund
 (Capital Improvement and Bond Retirement Fund)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Debt Service Reserve _____	\$ 2,256,885
2 State 4-H Camp—Jackson's Mill—Capital Im-	
3 provement	300,000
4 Fairmont State College—Campus Development	
5 (additional floor on Fine and Applied Arts	
6 Building)	1,400,000
7 West Virginia University—Campus Develop-	
8 ment (upgrade animal quarters in Brooks and	
9 Oglebay Halls; supplement for central re-	
10 ceiving and warehouse facility)	2,000,000
11 Miscellaneous Campus Development Projects ____	700,000
12 Total _____	\$ 6,656,885

13 The above projects are listed in a stated order of priority.
 14 Projects are to be paid on a cash basis and made available
 15 from date of passage. It is intended that only complete and
 16 usable projects be constructed and then only in the listed
 17 order of priority: *Provided, however,* That whenever the
 18 amount in the special capital improvement fund shall be
 19 sufficient to cover all capital expenditures authorized
 20 above, then the listed projects shall be considered of equal
 21 priority and all of them or any one or more, may be
 22 undertaken as soon as plans can be prepared and contracts
 23 let therefor.

24 The total amount of this appropriation shall be paid from
 25 the Special Capital Improvement Fund created by the 1971
 26 Legislature.

27 Any unexpended balances remaining in prior years and
 28 in the 1977-78 appropriation are reappropriated for expen-
 29 diture during fiscal year 1978-79.

139—*Board of Regents—Special Capital Improvement Fund*

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service _____ \$ 1,675,474

2 The total amount of this appropriation shall be
 3 paid from the nonrevolving Capital Im-
 4 provement Fund created by the 1959 Legisla-
 5 ture, as amended.

6 Any unexpended balances remaining in prior
 7 years and 1977-78 appropriations are hereby
 8 reappropriated for expenditure during fiscal
 9 year 1978-79.

140—*Board of Regents—Capital Improvement Fund*

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior
 2 years and 1977-78 appropriations are hereby
 3 reappropriated for expenditure during the
 4 fiscal year 1978-79.

141—*Board of Regents—Special Capital Improvement Fund*

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service—Total _____	\$ 4,705,082
2 West Virginia Institute of Technology parking	
3 facilities _____	200,000
4 Campus Development	
5 (Reroof and replace heating and air condi-	
6 tioning system in science laboratory and engi-	
7 neering laboratory buildings) _____	1,050,000
8 Glenville State College	
9 Campus Development _____	800,000

10	Construction of Multi-Purpose Building and to	
11	be used in conjunction with previous appro-	
12	priated funds for Alterations and Renova-	
13	tions.	
14	West Virginia University	
15	Campus Development	5,510,000
16	(Capital Improvement Project—	
17	College of Agriculture and Forestry Live-	
18	stock Teaching and Research Facilities). Re-	
19	place utility lines in Clark Hall, renovate	
20	White Hall, remodel and expansion of Basic	
21	Sciences Building, structural repairs to Engi-	
22	neering Building, renovate Eiesland Hall.	
23	Marshall University	
24	Campus Development	400,000

25 The above projects are listed in a stated order of priority.
 26 Projects are to be paid on a cash basis and made available
 27 from date of passage. It is intended that only complete and
 28 usable projects be constructed and then only in the listed
 29 order of priority: *Provided, however*, That whenever the
 30 amount in the Special Capital Improvement Fund shall be
 31 sufficient to cover all capital expenditures authorized
 32 above, then the listed projects shall be considered of equal
 33 priority and all of them, or any one or more, may be under-
 34 taken as soon as plans can be prepared and contracts let
 35 therefor.

36 The total amount of this appropriation shall be paid from
 37 the Special Capital Improvement Fund created by the 1977
 38 Legislature.

39 Any unexpended balances remaining in prior years and
 40 the 1977-78 appropriation are hereby reappropriated for
 41 expenditure in fiscal year 1978-79.

142—*Board of Regents—Certain Capital Improvements*

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balance remaining in this
 2 account at the close of the fiscal year 1977-78

3 is hereby reappropriated for expenditure
4 during fiscal year 1978-79.

143—*Workmen's Compensation Commission*

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services _____	\$ 3,200,000
2	Current Expenses _____	2,172,530
3	Equipment _____	115,000
4	Social Security Matching _____	193,600
5	Public Employees Retirement Matching	304,000
6	Public Employees Health Insurance _____	148,000
7	Total _____	\$ 6,133,130

8 There is hereby authorized to be paid out of
9 above appropriation for Current Expenses
10 the amount necessary for the premiums on
11 bonds given by the State Treasurer as Bond
12 Custodian for the protection of the Work-
13 men's Compensation Fund. This sum shall
14 be transferred to the Board of Insurance.

144—*West Virginia Alcohol Beverage Control*

Acct. No. 927

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner _____	\$ 30,000
2	Other Personal Services _____	7,182,630
3	Current Expenses _____	3,556,500
4	Repairs and Alterations _____	60,500
5	Equipment _____	212,000
6	Social Security Matching _____	451,348
7	Agency Operating Expense _____	60,000
8	Public Employees Retirement Matching	708,728
9	Public Employees Health Insurance _____	550,000
10	Total _____	\$ 12,811,706

11 The total amount of this appropriation shall be
 12 paid from Special Revenue Fund out of
 13 liquor revenues.

14 The above appropriation includes the salaries
 15 of store personnel, store inspectors, store
 16 operating expenses and equipment; and
 17 salaries, expenses and equipment of adminis-
 18 tration offices.

19 There is hereby appropriated from liquor rev-
 20 enues, in addition to the appropriation, the
 21 necessary amount for the purchase of liquor,
 22 as provided by law.

145—*West Virginia University—Medical School*

Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Personal Services	\$ 29,944,443
2 Current Expenses	18,296,650
3 Repairs and Alterations	1,450,000
4 Equipment	2,107,410
5 Intern and Residency Support Program for	
6 Community Hospitals	825,000
7 Family Practice Residency Support Program...	660,194
8 Total.....	\$ 53,283,697

9 Special funds in excess of the amounts hereby
 10 appropriated may be made available by
 11 budget amendment upon request of the
 12 Board of Regents and approval of the Gov-
 13 ernor.

1 **Sec. 3.—Awards for claims against the state.**—From the
 2 funds designated there are hereby appropriated for the re-
 3 mainder of the fiscal year 1977-78 and to remain in effect
 4 until June 30, 1979, for payment of claims against the state,
 5 the following amounts itemized:

6 (a) Claim against the Nonintoxicating Beer Commission:
 7 (To be paid from General Revenue Fund)
 8 (1) Lonnie W. Bradbury\$ 1,569.20

9	(b) Claim against the Department of Education,	
10	Division of Vocational Education:	
11	(To be paid from General Revenue Fund)	
12	(1) Dunbar Printing Company	759.20
13	(c) Claims against the Governor's Office of	
14	Economic and Community Development:	
15	(To be paid from General Revenue Fund)	
16	(1) Jones Printing Company, Inc.	235.00
17	(2) Sam Siclair, d/b/a Galion Canvas	
18	Products Company	808.80
19	(d) Claims against the Department of Natural	
20	Resources:	
21	(To be paid from General Revenue Fund)	
22	(1) Mrs. Richard L. Cooper	475.00
23	(2) Raleigh Motor Sales, Inc.	1,452.36
24	(3) Jerry Austin Rexrode	2,943.72
25	(4) Edith Ann Thompson &	
26	Roger Dale Thompson	9,627.36
27	(e) Claims against the Department of	
28	Corrections:	
29	(To be paid from General Revenue Fund)	
30	(1) Boone Remodeling Co.	16,930.00
31	(2) Cecil E. Jackson Equipment, Inc.	415.24
32	(3) Friden Mailing Equipment Corporation....	147.00
33	(4) S. B. Wallace & Co.	157.49
34	(f) Claims against the Department of Health,	
35	Division of Mental Health:	
36	(To be paid from General Revenue Fund)	
37	(1) Clendenin Lumber & Supply Company.....	458.85
38	(2) Peggy S. Gott	4,332.00
39	(3) Otis Elevator Company	95.00
40	(4) Polis Brothers	239.90
41	(5) Mary Jo Sharp	458.00
42	(6) Travenol Laboratories, Inc.	53.52

43	(g) Claim against the State Auditor:	
44	(To be paid from General Revenue Fund)	
45	(1) Phyllis J. Rutledge, Circuit Clerk of	
46	Kanawha County, West Virginia	314.00
47	(h) Claims against the Board of Regents:	
48	(To be paid from General Revenue Fund)	
49	(1) Direct Mail Service Co.	750.00
50	(2) Jacquelyn B. Eisenberg, parent and next	
51	friend of Mark Harrold Eisenberg	1,500.00
52	(3) Sanders Floor Covering, Inc.	1,819.00
53	(4) Thompson's of Morgantown, Inc.	901.77
54	(i) Claims against the Department of Motor	
55	Vehicles:	
56	(To be paid from State Road Fund)	
57	(1) Sandra S. Clemente	73.75
58	(2) George M. Custer	300.00
59	(3) IBM Corporation	123.65
60	(4) Moore Business Forms, Inc.	195.97
61	(5) Anthony R. Rosi	271.60
62	(6) 3M Business Products Sales, Inc.	957.50
63	(j) Claim against the Department of	
64	Agriculture:	
65	(To be paid from General Revenue Fund)	
66	(1) Hogan Storage & Transfer Company	6,000.00
67	(k) Claims against the Board of Vocational	
68	Education, Division of Vocational	
69	Rehabilitation:	
70	(To be paid from General Revenue Fund)	
71	(1) Arthritis Care Associates	25.40
72	(2) Kanawha Valley Radiologists, Inc.	109.00
73	(3) New Martinsville/Wetzel County	
74	Emergency Squad, Inc.	162.00
75	(1) Claim against the Department of Public	
76	Safety:	
77	(To be paid from General Revenue Fund)	
78	(1) H. M. Hills, Jr. & Luis A. Loimil	105.00

79	(m) Claim against the Office of Emergency	
80	Services:	
81	(To be paid from General Revenue Fund)	
82	(1) Richard L. Weekly	2,170.83
83	(n) Claim against the State Tax Department:	
84	(To be paid from General Revenue Fund)	
85	(1) Donald M. Bondurant	5,585.34
86	(o) Claim against the Department of Welfare:	
87	(To be paid from General Revenue Fund)	
88	(1) Thomas F. Lambert	457.60
89	(p) Claims against the Department of Highways:	
90	(To be paid from State Road Fund)	
91	(1) Elvin S. Alford	2,800.00
92	(2) Curtis Allison	244.85
93	(3) David E. Alvis	99.85
94	(4) Appalachian Power Co.	2,303.35
95	(5) Frank G. Barr	595.68
96	(6) Olie G. Bastin and Priscilla Bastin	4,500.00
97	(7) Raymond W. Belmont	80.00
98	(8) Downer B. Boley	926.83
99	(9) Boone Sales, Inc.	1,100.00
100	(10) Charles A. Bowman	154.50
101	(11) Minnie Lee Brown	4,500.00
102	(12) Darrell E. Buckner &	
103	Betty S. Buckner	63.46
104	(13) Eleanor F. Charbeneau &	
105	Eleanor B. Charbeneau	253.45
106	(14) David L. Clark, Sr.	5,572.00
107	(15) Michael H. Coen and Ruth Coen	65,000.00
108	(16) Ishmael Collins	500.00
109	(17) Virginia Sue Cook	112.27
110	(18) Clyde W. Cummings &	
111	Betty L. Cummings	1,030.00
112	(19) Billy Joe Davis	750.00
113	(20) Frank Davis and Billy Joe Davis,	
114	d/b/a Davis Auto Parts	21,125.00

115 (21)	Clarence V. Eastes, Jr. _____	144.20
116 (22)	Albert D. Fentress and	
117	Hazel S. Fentress _____	122.68
118 (23)	Bradford G. Frazier _____	160.48
119 (24)	Timothy J. Grimmatt _____	271.44
120 (25)	Michael J. Hart _____	46.49
121 (26)	Hartford Accident &	
122	Indemnity Company _____	21,326.50
123 (27)	Robert M. Hastings & Linda Hastings,	
124	d/b/a Hastings Stables _____	365.00
125 (28)	Barbara Henson _____	128.14
126 (29)	Clifford E. Honsaker, Jr. _____	10.14
127 (30)	Kermit Reed Hubbs _____	435.90
128 (31)	McHenry Hudnall, Jr. _____	147.73
129 (32)	Robert H. Johnson _____	900.00
130 (33)	Marvin Kidd _____	52.50
131 (34)	Moses Kolesar _____	6,500.00
132 (35)	Theodore Korthals & Emile Korthals _____	3,500.00
133 (36)	Eugene Lafferty and Wanda Lafferty _____	10,500.00
134 (37)	Linda Lester and Leon Lester _____	187.63
135 (38)	Gerald J. Lynch _____	206.76
136 (39)	Hugh C. Mayfield _____	400.00
137 (40)	Arthur Maynard and Mollie Maynard _____	2,475.00
138 (41)	Norman Maynard & Shirley Maynard _____	1,250.00
139 (42)	Helen L. Norvell, Executrix of the Estate	
140	of Glen Hartsel Norvell, deceased _____	15,000.00
141 (43)	Arizona M. Offutt _____	1,625.00
142 (44)	John C. Perkins, Jr., and Wanda Perkins _____	72.30
143 (45)	Anna Jane Phillips _____	82.40
144 (46)	Thelma Ratcliff & William Glen Ratcliff _____	4,500.00
145 (47)	Ray R. Reed and Sharon Reed _____	5,000.00
146 (48)	Franklin Ross and Elsie M. Ross _____	347.80
147 (49)	Charles E. Schooley _____	7,000.00
148 (50)	Saleem A. Shah and Theresa A. Shah _____	3,500.00
149 (51)	Carolyn Crisp Sherwood _____	237.00
150 (52)	Mary Jo Shreve _____	100.00
151 (53)	Lawrence Craig Skaggs _____	102.23
152 (54)	State Chemical Manufacturing Co. _____	2,217.50
153 (55)	Fred K. Testa and Claudia I. Testa _____	4,500.00
154 (56)	Paul Edward Tucker _____	93.32
155 (57)	Marvin Roy Welch _____	50.00

156	(58) Whitmyer Brothers, Inc. _____	110,082.53
157	(59) John R. Wilder and Norma J. Wilder _____	233.36
158	(q) Claim against the Department of Motor	
159	Vehicles:	
160	(To be paid from State Road Fund)	
161	(1) West Virginia Public Employees Insurance	
162	Board _____	5,563.68
163	(r) Claims against the Department of	
164	Corrections:	
165	(To be paid from General Revenue Fund)	
166	(1) Graves-Humphreys, Inc. _____	1,804.99
167	(2) C. H. James & Co., Div. of	
168	James Produce Co., Inc. _____	39.91
169	(3) Department of Highways _____	3,040.00
170	(4) Lashley Tractor Sales _____	513.47
171	(s) Claims against the Department of Health,	
172	Division of Mental Health:	
173	(To be paid from General Revenue Fund)	
174	(1) Lewis Edmon Cox _____	185.64
175	(2) Ruth McPherson _____	1,267.25
176	(3) John C. Racer _____	178.80
177	(4) Physicians Fee Office _____	2,145.23
178	(5) Pedro N. Ambrosio, M.D. _____	272.00
179	(6) Pfizer Corporation, Roerig Division _____	608.00

1 **Sec. 4.—Reappropriations**—Any unexpended balances of
2 Items I, V, VI, VII, IX, X and XII in the appropriations
3 made by and under the authority of Sec. 4 of the 1972
4 Budget Act, and amended under Sec. 4 of the 1977 Budget
5 Act, are hereby reappropriated for expenditure during
6 the fiscal year 1978-79 with exception of the following
7 accounts: Item VI, Acct. Nos. 4191-15, 4105-16, 4211-15,
8 4105-15, 4105-17, 4201-16, 4231-15, 4211-16, 4201-17; Item VII,
9 Acct. Nos. 4311-15, 4301-15, 4301-16, 4301-17, 4301-18,
10 4301-19 and 4271-15; Item XII, Acct. No. 4103-15 to be re-
11 duced \$3,500,000.

12 Any unexpended balances of Items I, III, IV, XI, XII,
13 XIV, XV, XVI, and XVII in the appropriations made by

14 and under the authority of Sec. 4 of the 1973 Budget Act
 15 and amended under Sec. 4 of the 1977 Budget Act, are
 16 hereby reappropriated for expenditure during the fiscal
 17 year 1978-79 with exception of the following accounts:
 18 Item XIII, Acct. Nos. 4271-16, 4251-16, 4261-15, 4261-06, 4301-
 19 22, 4311-18, 4311-19, 4311-20 and 4311-21; Item XIV, Acct.
 20 Nos. 4221-16, 4221-17, 4221-21, 4221-18, 4221-19, 4100-17, 4191-
 21 20, 4231-16 and 4191-21.

22 Any unexpended balances of Item I, III and IV in the
 23 appropriation made by and under Sec. 4 of the 1976 Bud-
 24 get Act are hereby reappropriated for expenditure during
 25 the fiscal year 1978-79.

1 **Sec. 5.—Appropriations from revenue sharing trust fund.**
 2 —The following items are hereby appropriated from the
 3 Revenue Sharing Trust Fund to be available for expendi-
 4 ture during the fiscal year 1978-79.

146—*Revenue Sharing Trust Fund—
 Department of Highways*

Acct. No. 9705

1	New River Gorge—North Rim		
2	Overlook	\$	250,000

147—*Revenue Sharing Trust Fund—
 State Health Department*

Acct. No. 9715

1	Feasibility Study of Bakers Heights		
2	Hospital	\$	25,000
3	Pinecrest State Hospital—Construction and		
4	Equipment of New Building		2,000,000
5	Welch General Hospital—Construction		5,000,000
6	Region III Community Mental Health—Con-		
7	struction		1,600,000

148—*Revenue Sharing Trust Fund—
 Governor's Office*

Acct. No. 9721

1	Lower Pond Run Storm Sewer Projects	\$	500,000
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149—*Revenue Sharing Trust Fund—
Department of Natural Resources*

Acct. No. 9725

1	Twin Falls State Park—Capital		
2	Improvements	\$	500,000
3	Tomlinson Run State Park—		
4	Capital Improvements		583,000

150—*Revenue Sharing Trust Fund—
State Board of Education—Vocational Education*

Acct. No. 9800

1	Construction—Hancock County		
2	Vocational Center	\$	2,026,000
3	Construction—Monroe County		
4	Vocational Center		550,000
5	Construction—Wayne County		
6	Ft. Gay/Crum		525,000
7	Construction—Wayne County		
8	Vinson, Ceredo-Kenova, Wayne, and		
9	Buffalo Valley		938,000
10	Construction—Greenbrier County		
11	(Expansion Greenbrier East and		
12	Greenbrier West)		250,000
13	Construction—Lincoln County		
14	Vocational Center Phase II		325,000
15	Doddridge County—(Upgrade Vo-Ag, new		
16	facilities for Career Education with		
17	construction of new vocational wing		
18	for Doddridge County High School)		400,000
19	Construction—Hardy County		
20	(Construction of new vocational wing to		
21	Comprehensive Moorefield High School)		150,000
22	Equipment for new vocational		
23	facilities		740,000
24	Preston County Vo-Tech Center		400,000
25	Barbour County (Comprehensive		
26	HS/Vocational Wing)		400,000

151—*Revenue Sharing Trust Fund—Department of Agriculture*

Acct. No. 9771

1 Beckley Farmers Market\$ 20,000

1 **Sec. 6. Appropriations from countercyclical fiscal as-**
 2 **sistance trust fund.**—Moneys received by the State of West
 3 Virginia pursuant to the provisions of the “Public Works
 4 Employment Act of 1976; Title II of Public Law 94-369,”
 5 as amended by the “Intergovernmental Antirecession
 6 Assistance Act of 1977; Public Law 95-30,” enacted by the
 7 Congress of the United States, shall be deposited in the
 8 State Treasury and kept in a separate account entitled
 9 “Countercyclical Fiscal Assistance Trust Fund.”

10 The following items are hereby appropriated from such
 11 fund to be available for expenditure during the fiscal year
 12 1978-79.

152—*Countercyclical Fiscal Assistance Trust Fund—
Governor’s Office*

Acct. No. 8012

1 T.R.I.P.	\$ 500,000
2 Health Planning, Licensure 3 and Development	500,000
4 Department of Highways 5 General Operations—Personal Services	3,000,000
6 Unclassified ...	50,000
7 Total.....	\$ 4,050,000

8 The above appropriations are to be expended
 9 pursuant to the requirements of the above
 10 public laws. In the event any of the above
 11 items are declared ineligible for expenditure
 12 under said public laws, the amount appropri-
 13 ated to such ineligible item may be redesign-
 14 ated, committed and expended for eligible
 15 projects as determined by the Governor.

16 The above items and funds in excess of the
 17 amounts herein appropriated, after actual re-

18 ceipt and deposit, are hereby appropriated
19 and made available for expenditure upon ap-
20 proval by the Governor.

21 Any part of this appropriation or amounts in
22 excess thereof may be transferred to any
23 other account in the Governor's Office or to
24 any other department of State government
25 for disbursement or expenditure.

1 **Sec. 7. Reappropriations—"Revenue Sharing Trust**
2 **Fund."**—Any unexpended balances to the appropriations
3 made by and under Sec. 8, of the 1973 Budget Act and
4 Supplementary Acts to Chapter 10, acts of the Legislature,
5 Regular Session 1973, under Sec. 5 of the 1974 Budget
6 Act, and Supplementary Acts to Chapter Two, acts of the
7 Legislature, Regular Session 1975, under Sec. 7, acts of
8 the Legislature, Regular Session 1976 and supplementary
9 acts to Chapter 7, acts of the Legislature, Regular Session
10 1976, and as amended in Sec. 7 of the 1977 Budget Act,
11 at the close of the fiscal year 1977-78 are hereby reappro-
12 priated for expenditure during the fiscal year 1978-79,
13 with exception of the following accounts: Acct. Nos. 9710-
14 05, 9715-06, 9720-06, 9734-05, 9736-06, 9736-07, 9736-09, 9736-
15 10, 9736-11, 9736-12, 9736-13, 9736-14, 9736-15, 9736-16, 9736-
16 17, 9745-11, 9745-12, 9745-13, 9731-06, 9731-07, 9745-16 and
17 9745-21.

1 **Sec. 8. Special revenue appropriations.**—There is here-
2 by appropriated for expenditure during the fiscal year one
3 thousand nine hundred seventy-nine, appropriations made
4 by general law from special revenue which are not paid
5 into the state fund as general revenue under the provisions
6 of Chapter 12, Article 2, Section 2 of the Code of West Vir-
7 ginia, one thousand nine hundred thirty-one: *Provided,*
8 *however,* That none of the moneys so appropriated by this
9 section shall be available for expenditure except in compli-
10 ance with and in conformity to the provisions of Chapter
11 12, Articles 2 and 3, and Chapter 5-A, Article 2 of the Code
12 of West Virginia, unless the spending unit has filed with the
13 State Director of the Budget, the State Auditor and the
14 Legislative Auditor prior to the beginning of each fiscal
15 year.

16 (a) An estimate of the amount and sources of all rev-
17 enues accruing to such fund.

18 (b) A detailed expenditure schedule showing for what
19 purposes the fund is to be expended.

1 **Sec. 9. State improvement fund appropriation.**—Be-
2 quests or donations of nonpublic funds received by the
3 Governor on behalf of the State during the fiscal year one
4 thousand nine hundred seventy-eight, for the purpose of
5 making studies and recommendations relating to improve-
6 ments of the administration and management of spending
7 units in the executive branch of State Government, shall be
8 deposited in the State Treasury in a separate account there-
9 in designated "State Improvement Fund."

10 There is hereby appropriated all moneys so deposited
11 during the fiscal year one thousand nine hundred seventy-
12 eight, to be expended as authorized by the Governor, for
13 such studies and recommendations which may encompass
14 any problems of organization, procedures, systems, func-
15 tions, powers or duties of a state spending unit in the
16 executive branch, or the betterment of the economic, social,
17 educational, health and general welfare of the State or its
18 citizens.

1 **Sec. 10. Specific funds and collection accounts.**—A fund
2 or collection account, which by law is dedicated to a spe-
3 cific use is hereby appropriated in sufficient amount to
4 meet all lawful demands upon the fund or collection ac-
5 count, and shall be expended according to the provisions
6 of Chapter 12, Article 3 of the Code of West Virginia.

1 **Sec. 11. Appropriation for refunding erroneous pay-**
2 **ments.**—Money that has been erroneously paid into the
3 state treasury is hereby appropriated out of the fund into
4 which was paid for refund to the proper person.

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he
7 shall issue his requisition upon the Auditor for the refund-
8 ing of the proper amount. The auditor shall issue his war-
9 rant to the Treasurer and the Treasurer shall pay the war-
10 rant out of the fund into which the amount was originally
11 paid.

1 **Sec. 12. Sinking fund deficiencies.**—There is hereby
2 appropriated to the Governor a sufficient amount to meet
3 any deficiencies that may arise in the mortgage finance
4 bond insurance fund of the West Virginia Housing Develop-
5 ment Fund which is under the supervision and control of
6 the state sinking fund commission as provided by Chapter
7 31, Article 18, Section 20b of the Code of West Virginia, one
8 thousand nine hundred thirty-one, as amended, or in the
9 funds of the state sinking fund commission because of the
10 failure of any state agency for either general obligation or
11 revenue bonds or any local taxing district for general obli-
12 gations bonds to remit funds necessary for the payment of
13 interest and sinking fund requirements. The Governor is
14 authorized to transfer from time to time such amounts to
15 the state sinking fund commission as may be necessary for
16 these purposes.

17 The state sinking fund commission shall reimburse the
18 State of West Virginia through the Governor from the first
19 remittance collected from the West Virginia Housing De-
20 velopment Fund or from any state agency or local taxing
21 district for which the Governor advanced funds, with in-
22 terest at the rate carried by the bonds for the security or
23 payment of which the advance was made.

1 **Sec. 13. Appropriations from taxes and license fees.**
2 —There is hereby appropriated from the soft drink tax
3 revenues for administration and enforcement of the law re-
4 lating to said tax, a sum not to exceed two and one-half
5 percent of the total revenues collected. All such salaries
6 and expenses, authorized by law as aforesaid, shall be paid
7 by the tax commissioner through the State Treasury out of
8 gross collections.

9 There is hereby appropriated from the cigarette tax rev-
10 enues for administration and enforcement of the law re-
11 lating to said tax, a sum not to exceed one and one-half
12 percent of the total revenues collected. All such salaries
13 and expenses, authorized by law as aforesaid, shall be paid
14 by the tax commissioner through the State Treasury out of
15 the gross collections.

1 **Sec. 14. Appropriations to pay costs of publication**

2 of delinquent corporations.—There is hereby appropriated
3 out of the State Fund, General Revenue, out of funds not
4 otherwise appropriated to be paid upon requisitions of the
5 Auditor and/or the Governor, as the case may be, a sum
6 sufficient to pay the cost of publication of delinquent cor-
7 porations as provided by Chapter 11, Article 12, Sections 84
8 and 86 of the Code of West Virginia.

1 Sec. 15. Appropriations for local governments.—There
2 is hereby appropriated for payment to counties, districts
3 and municipal corporations such amounts as will be neces-
4 sary to pay taxes due county, district and municipal cor-
5 porations and which have been paid into the treasury:

- 6 (a) For redemption of lands;**
- 7 (b) By public service corporations;**
- 8 (c) For tax forfeitures.**

1 Sec. 16. Total appropriations.—Where only a total sum
2 is appropriated to a spending unit that total sum shall
3 include personal services, current expenses, and capital
4 outlay, except as otherwise provided in Title I, Section 3.

1 Sec. 17. General school fund.—The balance of the
2 proceeds of the general school fund remaining after the
3 payment of the appropriations made by this act is appro-
4 priated for expenditure in accordance with Chapter 18,
5 Article 9-A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

1 Section 1. Appropriations conditional.—The expenditure
2 of the appropriations made by this act, except those ap-
3 propriations made to the legislative and judicial branches
4 of the State Government, are conditioned upon the com-
5 pliance by the spending unit with the requirements of
6 Chapter 5-A, Article 2 of the Code of West Virginia.

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legisla-
9 ture, it is the intent of this act that reappropriation shall be

10 to the succeeding or later spending unit created unless
11 otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent juris-
3 diction, its decision shall not affect any portion of this act
4 which remains, but the remaining portion shall be in full
5 force and effect as if the portion declared unconstitutional
6 had never been a part of the act.

CHAPTER 5

(H. B. 1579—By Mr. Farley)

[Passed March 1, 1978; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Attorney General, Account No. 240, as appropriated by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 240, chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, be supplemented, amended and transferred to read as follows:

1		LEGAL	
2		24—Attorney General	
3		Acct. No. 240	
4	2	Other Personal Services	\$971,582
5	3	Current Expenses	145,000
6	4	Equipment	29,000

7 The purpose of this supplementary appropriation bill is to
8 supplement, amend and transfer certain moneys from one
9 item of the existing appropriation to another item of such

10 appropriation for the designated spending unit. The amounts
 11 as itemized for expenditure during the fiscal year one
 12 thousand nine hundred seventy-eight, shall be made available
 13 for expenditure upon the effective date of this bill.

CHAPTER 6

(Com. Sub. for S. B. 502—By Mr. Susman)

[Passed March 7, 1978; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Pinecrest State Hospital, Account No. 431, as appropriated by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 431, chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, be supplemented, amended and transferred to read as follows:

74—Pinecrest State Hospital

Acct. No. 431

1	1 Personal Services	\$ 2,765,946
2	2 Current Expenses	932,000

3 The purpose of this supplementary appropriation bill
 4 is to supplement, amend and transfer certain moneys
 5 from one item of the existing appropriation to
 6 another item of such appropriation for the designated
 7 spending unit. The amounts as itemized for expenditure
 8 during the fiscal year one thousand nine hundred seventy-
 9 eight, shall be made available for expenditure upon the
 10 effective date of this bill.

CHAPTER 7

(S. B. 426—By Mr. Ward)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Public Safety, Account No. 570, as appropriated by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 570, chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, be supplemented, amended and transferred to read as follows:

PROTECTION

102—*Department of Public Safety*

Acct. No. 570

1	1	Personal Services	\$8,495,980
2	2	Current Expenses	3,727,836

3 The purpose of this supplementary appropriation bill is
 4 to supplement, amend and transfer certain moneys from
 5 one item of the existing appropriation to another item of
 6 such appropriation for the designated spending unit. The
 7 amounts as itemized for expenditure during the fiscal
 8 year one thousand nine hundred seventy-eight, shall be
 9 made available for expenditure upon the effective date of
 10 this bill.

CHAPTER 8

(Com. Sub. for H. B. 1527—By Mr. Speaker, Mr. Kopp)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-eight, as appropriated by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-eight, as appropriated by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-seven, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1	TITLE II—APPROPRIATIONS.	
2	Section 2. Appropriations from Other Funds.	
3	122—State Department of Highways	
4	Acct. No. 670	
5	TO BE PAID FROM STATE ROAD FUND	
6	1	Maintenance Expressway, Trunkline and
7	2	Feeder
		\$ 58,340,000
8	3	Maintenance State Local Services
		18,241,000
9	4	Inventory Revolving
		1,000,000
10	5	Equipment Revolving
		6,500,000
11	6	General Operations
		17,931,000
12	7	Debt Service
		75,200,000
13	8	Interstate Construction
		116,997,000
14	9	Other Federal Aid Programs
		74,909,000
15	10	Appalachian Programs
		58,033,000

16	11	Nonfederal Aid Construction	87,559,000
17		Total	\$514,710,000

18 The purpose of this bill is to supplement, amend and trans-
 19 fer certain moneys from items of the existing appropriations
 20 to other items of such appropriations for the designated
 21 spending unit, and to reflect the total spending authority of
 22 the spending unit for the 1977-78 fiscal year, with no new
 23 moneys being appropriated hereby. The amounts as newly
 24 itemized for expenditure in such fiscal year shall be available
 25 for expenditure upon the effective date of this bill.

CHAPTER 9

(H. B. 1350—By Mr. Shingleton)

[Passed March 1, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of the deputy commissioner of banking; reduction in experience required.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-3. Deputy commissioner's appointment, tenure, salary, qualifications, oath and bond; exercise of commissioner's powers by deputy.

1 The deputy commissioner of banking shall be appointed
 2 by and be under the supervision and direction of the com-
 3 missioner of banking. The deputy commissioner's tenure
 4 in office shall be at the will and pleasure of the commissioner.

5 The deputy commissioner's salary shall be fixed annually by
6 the commissioner and shall be payable in installments as
7 provided by law.

8 Any person appointed as deputy commissioner shall have
9 had at least three years' experience as an active executive
10 officer of a bank in this state or a minimum of three years'
11 experience in a bank examining or supervisory capacity for
12 this state, for other states, or for the federal government,
13 or a combination thereof, or a minimum of four years' com-
14 bined experience as such active bank executive officer and in
15 such examining or supervisory capacity.

16 Before entering upon the discharge of the duties of his
17 office, the deputy commissioner shall comply with the same
18 oath and bond requirements prescribed for the commissioner
19 in section two of this article.

20 In the event of a vacancy in the office of commissioner
21 or in the event of the disability or absence from the state
22 of the commissioner, the deputy commissioner shall have and
23 may exercise all of the authority and powers of the com-
24 missioner and shall be responsible for the performance of
25 all duties, functions and services of the commissioner.

CHAPTER 10

(H. B. 1351—By Mr. Shingleton)

[Passed March 1, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fees, costs and expenses of examination charged to banks by the department of banking.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter thirty-one-a of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-8. Fees, costs and expenses of examinations; collection.

1 (a) For making an examination within the state of any
2 state banking institution, the commissioner of banking shall
3 charge and collect from such institution and pay into the
4 state treasury a fee of one hundred dollars upon the first
5 twenty-five thousand dollars of the assets as shown by the
6 books of the bank on the date of examination and thirteen
7 and one-half cents for each additional one thousand dollars
8 of such assets.

9 (b) For making such an examination within the state of
10 any other financial institution, the commissioner of banking
11 shall charge and collect from such other financial institution
12 and pay into the state treasury the actual and necessary costs
13 and expenses incurred in connection therewith, as fixed and
14 determined by the commissioner.

15 (c) If any such examination be made at a place outside
16 of this state, the fees, costs and expenses shall be as above
17 provided, except that there shall be an additional charge for
18 mileage and travel expense as provided and allowed by law
19 for state agencies and employees.

20 (d) The commissioner of banking may maintain an action
21 for the recovery of all such fees, costs and expenses in any
22 court of competent jurisdiction.

⇓

CHAPTER 11

(S. B. 77—By Mr. Hamilton)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to raising the dollar limits on the total assets which a bank has to have in order to have a representative member on the West Virginia board of banking and financial institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel.

1 (a) There is hereby created the West Virginia board
2 of banking and financial institutions which shall consist
3 of six members and the commissioner, who shall be
4 chairman. The six members shall be appointed by the
5 governor by and with the advice and consent of the
6 Senate. Three of the members shall be executive officers
7 of state banking institutions, of whom one shall be truly
8 representative of such state banking institutions having
9 assets not greater than twenty-five million dollars, one
10 shall be truly representative of such state banking insti-
11 tutions having total assets greater than twenty-five
12 million dollars but not greater than fifty million dollars,
13 and one shall be truly representative of such banking
14 institutions having total assets greater than fifty million
15 dollars. One member shall be an executive officer of a
16 financial institution other than a banking institution.
17 Two members shall represent the public, neither of whom
18 shall be an employee, officer, trustee, director or stock-
19 holder of any financial institution. No member shall
20 hold any other office, employment or position with the
21 United States, any state, county, municipality or other
22 governmental entity or any instrumentality or agency
23 of any of the foregoing or with any political party.

24 (b) The members of the board shall be appointed for

25 overlapping terms of six years, except that of the orig-
26 inal appointments, two members shall be appointed for
27 a term of two years, two members shall be appointed
28 for a term of four years and two members shall be ap-
29 pointed for a term of six years, and in every instance
30 until their respective successors have been appointed and
31 qualified. Any member appointed for a full six-year
32 term may not be reappointed until two years after the
33 expiration of such term. Any member appointed for
34 less than a full six-year term shall be eligible for re-
35 appointment for a full term. Before entering upon the
36 performance of his duties each member shall take and
37 subscribe to the oath required by section 5, article IV,
38 of the constitution of the state of West Virginia. The
39 governor shall, within sixty days following the occur-
40 rence of a vacancy on the board, fill the same by appoint-
41 ing a person for the unexpired term of, and meeting the
42 same requirements for membership as, the person vacat-
43 ing said office. Any member may be removed by the
44 governor in case of incompetency, neglect of duty, gross
45 immorality or malfeasance in office.

46 (c) A majority of the members of the board shall
47 constitute a quorum. The board shall meet at least
48 once in each calendar quarter on a date fixed by the
49 board. The commissioner may, upon his own motion, or
50 shall upon the written request of three members of the
51 board, call additional meetings of the board upon at
52 least twenty-four hours' notice. No member shall par-
53 ticipate in a proceeding before the board to which a
54 corporation, partnership or unincorporated association is
55 a party, and of which he is or was at any time in the
56 preceding twelve months a director, officer, owner, part-
57 ner, employee, member or stockholder. A member may
58 disqualify himself from participation in a proceeding
59 for any other cause deemed by him to be sufficient. Each
60 member shall receive fifty dollars for each day or portion
61 thereof spent in attending meetings of the board and
62 shall be reimbursed for all reasonable and necessary
63 expenses incurred incident to his duties as a member of
64 the board.

65 (d) The board shall keep an accurate record of all
66 its proceedings and make certificates thereupon as may
67 be required by law. The commissioner shall make avail-
68 able necessary office space and secretarial and other
69 assistance as the board may reasonably require.

CHAPTER 12

(H. B. 1681—By Mr. Shingleton and Mr. Morasco)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the capital stock of state chartered banking institutions; minimum par value.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-3. Minimum capital stock; one class of stock; par value; capitalization of surplus.

- 1 (a) No banking institution shall hereafter be incorporated
2 unless it shall have a bona fide subscribed capital stock of:
 - 3 (1) At least fifty thousand dollars, if the population of the
4 community in which the bank is to be located be not more
5 than three thousand;
 - 6 (2) At least seventy-five thousand dollars, if the popula-
7 tion of the community in which the bank is to be located
8 be more than three thousand, but not more than six thousand;
 - 9 (3) At least one hundred thousand dollars, if the popula-
10 tion of the community in which the bank is to be located

11 be more than six thousand but not more than twenty-five
12 thousand;

13 (4) At least one hundred twenty-five thousand dollars,
14 if the population of the community in which the bank is to
15 be located be more than twenty-five thousand but not more
16 than fifty thousand; and

17 (5) At least one hundred fifty thousand dollars, if the
18 population of the community in which the bank is to be
19 located be more than fifty thousand.

20 The population figures as herein specified shall be ascer-
21 tainable from and be based upon the latest available United
22 States census.

23 (b) Notwithstanding any provision of subsection (a), no
24 banking institution proposing to engage in the trust business
25 shall be incorporated unless it shall have a bona fide sub-
26 scribed capital stock of at least one hundred thousand dollars.

27 (c) Banking institutions shall issue but one class of stock
28 and the shares shall have a nominal or par value of not
29 less than one dollar nor more than one hundred dollars each,
30 and as to each banking institution each share shall be equal
31 in all respects with any other share.

32 (d) Any banking institution may capitalize its surplus and
33 undivided profits by issuing shares of stock against the same
34 at par and distributing such shares among its stockholders,
35 or change the par value of its shares, when and to the extent
36 that any such action may be authorized in writing by the
37 commissioner.

CHAPTER 13

(Com. Sub. for S. B. 484—By Mr. Benson)

[Passed March 7, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section two, article nineteen,
chapter twenty-nine of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, relating to solicitation of charitable funds; adding to definition of "charitable organization" any person who employs an appeal for contributions which may be interpreted to suggest that contributions will be used for charitable purposes.

Be it enacted by the Legislature of West Virginia:

That section two, article nineteen, 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 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Charitable organization" means a person which is
3 or holds itself out to be a benevolent, educational, philan-
4 thropic, humane, patriotic, religious or eleemosynary
5 organization, or any person which solicits or obtains con-
6 tributions solicited from the public for charitable purposes
7 or any person who in any manner employs any appeal
8 for contributions which may be reasonably interpreted
9 to suggest that such contributions will be used for chari-
10 table purposes. A chapter, branch, area, office or similar
11 affiliate or any person soliciting contributions within the
12 state for a charitable organization which has its principal
13 place of business outside the state is a charitable organi-
14 zation for the purposes of this article. This definition shall
15 not be deemed to include religious organizations or any
16 group affiliated with and forming an integral part of said
17 organization no part of the net income of which inures to
18 direct benefit of any individual and which have received
19 a declaration of current tax exempt status from the gov-
20 ernment of the United States nor shall this definition
21 include any single church congregation located in the
22 county or local congregation of any religious affiliation or
23 any municipal-wide or county-wide little league or simi-
24 lar youth athletic organization or any service club. No
25 such affiliated group may be required to obtain such
26 declaration if the parent or principal organization shall
27 have obtained same.

28 (2) "Contributions" means the promise or grant of any
29 money or property of any kind or value.

30 (3) "Federated fund-raising organization" means a
31 federation of independent charitable organizations which
32 have voluntarily joined together, including, but not
33 limited to, a united fund or community chest, for purposes
34 of raising and distributing money for and among them-
35 selves and where membership does not confer operating
36 authority and control of the individual agencies upon the
37 federated group organization.

38 (4) "Parent organization" is that part of a charitable
39 organization which coordinates, supervises or exercises
40 control over policy, fund raising and expenditures, or
41 assists or advises one or more chapters, branches or
42 affiliates in the state.

43 (5) "Person" means any individual, organization, trust,
44 foundation, group, association, partnership, corporation,
45 society or any combination of them.

46 (6) "Professional fund-raising counsel" means any
47 person who for a flat fixed fee under a written agreement
48 plans, conducts, manages, carries on, advises or acts as a
49 consultant, whether directly or indirectly, in connection
50 with soliciting contributions for, or on behalf of any
51 charitable organization but who actually solicits no con-
52 tributions as a part of such services. A bona fide salaried
53 officer or employee of a charitable organization maintain-
54 ing a permanent establishment within the state shall not
55 be deemed to be a professional fund-raising counsel.

56 (7) "Professional solicitor" means any person who, for
57 a financial or other consideration, solicits contributions
58 for, or on behalf of a charitable organization, whether
59 such solicitation is performed personally or through their
60 agents, servants or employees specially employed by, or
61 for a charitable organization, who are engaged in the
62 solicitation of contributions under the direction of such
63 person, or a person who plans, conducts, manages, carries
64 on, advises or acts as a consultant to a charitable organi-
65 zation in connection with the solicitation of contributions

66 but does not qualify as "professional fund-raising counsel"
67 within the meaning of this article. A bona fide salaried
68 officer or employee of a charitable organization main-
69 taining a permanent establishment within the state
70 shall not be deemed to be a professional solicitor.

71 No attorney, investment counselor or banker, who
72 advises any person to make a contribution to a charitable
73 organization, shall be deemed, as the result of such advice,
74 to be a professional fund-raising counsel or a professional
75 solicitor.

76 (8) "Commission" means the commission on charitable
77 organizations herein created.

CHAPTER 14

(Com. Sub. for S. B. 364—By Mr. Hamilton, Mr. Gainer,
Mr. Kusic, Mr. Beall and Mr. Jones)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article one; sections one, two, three, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five; sections three and five, article five-a; and section one, article seven, all of chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two of said chapter by adding thereto a new section, designated section thirteen; to amend article five of said chapter by adding thereto five new sections, designated sections one-a, one-b, three-a, sixteen-a and sixteen-b; to further amend said chapter by adding thereto a new article, designated article six-b; and to amend and reenact section two, article thirteen, chapter sixty-two of said code, all relating to juvenile proceedings generally; and specifically relating to the purposes of the article; definitions of neglected child, abused child and delinquent child; jurisdiction of magistrate courts and municipal courts over persons under eigh-

teen years of age for certain offenses; continuing jurisdiction of juvenile court; noncustodial counseling of child; informal adjustment counseling of child; institution of delinquency proceedings by petition; notice of petition; subpoena to appear; taking children into custody; detention hearing; preliminary hearing; right to counsel; nondetention temporary custody; waiver and transfer of jurisdiction; criteria for transfer of child to adult criminal jurisdiction; appeal from transfer order; adjudicatory hearing; dispositional hearing; dispositional alternatives; juvenile probation officers; commitment of children to jail, correctional centers, industrial homes, secure juvenile facilities or the penitentiary; release of paroled children to the state department; rules and regulations governing juvenile facilities; juvenile facilities review panel; expungement of juvenile records; penalties for failure to expunge; detention hearings for custody obtained by state employees; detention hearing orders; detention in other counties; confidentiality of records and penalties therefor; petition for appointment of special guardian for medical purposes; and immunity from civil liability.

Be it enacted by the Legislature of West Virginia:

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

Chapter

49. Child Welfare.

62. Criminal Procedure.

CHAPTER 49. CHILD WELFARE.**Article**

1. **Purposes; Definitions.**
2. **State and County Responsibilities for the Protection and Care of Children.**
5. **Juvenile Proceedings.**
- 5A. **Juvenile Referee System.**
- 6B. **Appointment of Special Guardian to Secure Medical Treatment for Persons Under Eighteen Years of Age.**
7. **General Provisions.**

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.

§49-1-2. "Child" defined.

§49-1-3. "Neglected child" and "abused child" defined.

§49-1-4. "Delinquent child" defined.

§49-1-5. Definitions of other terms.

§49-1-1. Purpose.

1 (a) The purpose of this chapter is to provide a com-
2 prehensive system of child welfare throughout the state
3 which will assure to each child such care and guidance,
4 preferably in his own home, as will serve the spiritual,
5 emotional, mental and physical welfare of the child; pre-
6 serve and strengthen the child's family ties whenever
7 possible with recognition to the fundamental rights of
8 parenthood and with recognition of the state's responsi-
9 bility to assist the family in providing the necessary
10 education and training and to reduce the rate of juvenile
11 delinquency and to provide a system for the rehabilita-
12 tion or detention of juvenile delinquents and protect the
13 welfare of the general public. In pursuit of these goals it
14 is the intention of the Legislature to provide for removing
15 the child from the custody of parents only when the
16 child's welfare or the safety and protection of the public
17 cannot be adequately safeguarded without removal; and,
18 when the child has to be removed from his own family,
19 to secure for him custody, care and discipline consistent
20 with the child's best interests and other goals herein set
21 out.

22 (b) The child welfare service of the state shall be
23 administered by the state department of welfare and the

24 licensing board created by section four-a, article two of
25 this chapter.

26 The state department of welfare is designated as the
27 agency to cooperate with the United States department
28 of health, education and welfare and United States de-
29 partment of justice in extending and improving child
30 welfare services, to comply with regulations thereof, and
31 to receive and expend federal funds for these services.

§49-1-2. "Child" defined.

1 "Child" means any person under eighteen years of
2 age. Once a child is transferred to a court with criminal
3 jurisdiction pursuant to section ten, article five of this
4 chapter, he nevertheless remains a child for the purposes
5 of the applicability of the provisions of this chapter with
6 the exception of sections one through seventeen of article
7 five of this chapter, unless otherwise stated therein.

§49-1-3. "Neglected child" and "abused child" defined.

1 "Abused child" means a child:

2 Whose parent, guardian or custodian inflicts or attempts
3 to inflict or allows to be inflicted as a result of inadequate
4 supervision, physical injury or substantial emotional in-
5 jury upon the child which endangers the present physical
6 or mental health of such child or inflicts, attempts to
7 inflict, or knowingly allows to be inflicted sexual abuse
8 upon the child.

9 "Neglected child" means a child:

10 (1) Whose physical or mental condition is impaired or
11 endangered as a result of the present refusal, failure or
12 inability of the child's parent, guardian or custodian to
13 supply the child with necessary food, clothing, shelter,
14 supervision, medical care or education and the condition
15 is not due primarily to the lack of financial means of the
16 parent, guardian or custodian; or

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

21 "Neglected child" does not mean a child:

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

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

§49-1-4. "Delinquent child" defined.

1 "Delinquent child" means a child:

2 (1) Who commits an act which would be a crime under
3 state law or a municipal ordinance if committed by an
4 adult, punishable by confinement in a jail or imprison-
5 ment;

6 (2) Who commits an act designated a crime under a
7 municipal ordinance or state law not punishable by con-
8 finement in a jail or imprisonment;

9 (3) Who, without just cause, habitually and continually
10 refuses to respond to the lawful supervision by such
11 child's parents, guardian or custodian;

12 (4) Who is habitually absent from school without good
13 cause; or

14 (5) Who willfully violates a condition of a probation
15 order or a contempt order of any court.

§49-1-5. Definitions of other terms.

1 For the purposes of this chapter:

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

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

5 (3) "Commissioner" means the commissioner of wel-
6 fare;

7 (4) "Child welfare agency" means any agency or
8 institution maintained by a municipality or county, or
9 any agency or institution maintained by a person, firm,

10 corporation, association or organization to receive chil-
11 dren for care and maintenance or for placement in a
12 family home or day care center or any institution that
13 provides care for unmarried mothers and their children,
14 but shall not include county shelters established and
15 maintained for the detention of delinquent children
16 or those charged with delinquency;

17 (5) "Licensing board" means the state licensing board
18 created by section four-a, article two of this chapter;

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

24 (7) "Referee" means a juvenile referee appointed pur-
25 suant to section one, article five-a of this chapter, except
26 that in any county which does not have a juvenile referee
27 the judge or judges of the circuit court may designate
28 one or more magistrates of the county to perform the
29 functions and duties which may be performed by a
30 referee under this chapter;

31 (8) "Court" means the circuit court of the county with
32 jurisdiction of the case or the judge thereof in vacation
33 unless otherwise specifically provided;

34 (9) "Guardian" means a person who has care and cus-
35 tody of a child as a result of any contract, agreement or
36 legal proceeding.

ARTICLE 2. STATE AND COUNTY RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-13. Parole of certain children to state department.

1 Children paroled from state institutions and homes for
2 juveniles shall be paroled to the state department. There-
3 after, unless the court which committed the child other-
4 wise provides, the state department shall, notwithstanding
5 any other provision of this code, have supervisory control
6 over every child so paroled, and shall have authority

7 to revoke the parole or to discharge the child from
 8 parole. Upon the revocation of any parole and the return
 9 of the parolee to the institution from which he was
 10 paroled, all authority over the parolee, originally vested
 11 in such institution, shall again become operative.

ARTICLE 5. JUVENILE PROCEEDINGS.

- §49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.
- §49-5-1a. Jurisdiction of magistrate courts over persons under eighteen years of age for certain offenses.
- §49-5-1b. Jurisdiction of municipal courts over persons under eighteen years of age.
- §49-5-2. Continuing jurisdiction of court.
- §49-5-3. Noncustodial counseling of a child.
- §49-5-3a. Informal adjustment counseling by probation officer.
- §49-5-7. Institution of proceedings by petition; notice to child and parents; subpoena.
- §49-5-8. Taking a child into custody; detention hearing; counsel.
- §49-5-9. Preliminary hearing; counsel; improvement period.
- §49-5-10. Waiver and transfer of jurisdiction.
- §49-5-11. Adjudication.
- §49-5-12. Prosecuting attorney to represent petitioner.
- §49-5-13. Disposition; appeal.
- §49-5-14. Modification of dispositional orders.
- §49-5-15. Juvenile probation officers; duties; expenses; powers.
- §49-5-16. Committing children to jail and detention facilities; standards.
- §49-5-16a. Rules and regulations governing juvenile facilities.
- §49-5-16b. Juvenile facilities review panel; compensation; expenses.
- §49-5-17. Expungement of records; no discrimination.

§49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.

1 (a) The circuit court of the county shall have original
 2 jurisdiction in proceedings brought under this article.

3 If during a criminal proceeding against a person in any
 4 court, it shall be ascertained or shall appear that the
 5 person is under the age of nineteen years and was
 6 under the age of eighteen years at the time of the alleged
 7 offense, the matter shall be immediately certified to
 8 the juvenile jurisdiction of the circuit court, and the cir-
 9 cuit court shall assume jurisdiction of the case in the same
 10 manner as cases originally instituted in the circuit court

11 by petition: *Provided*, That for violation of a traffic law
12 of West Virginia, magistrate courts shall have concurrent
13 jurisdiction with the circuit court, and persons under the
14 age of eighteen years shall be liable for punishment for
15 violation of such traffic laws in the same manner as adults
16 except that magistrate courts shall have no jurisdiction to
17 impose a sentence of confinement for the violation of
18 traffic laws.

19 As used in this section, "violation of a traffic law of
20 West Virginia" means violation of any law contained in
21 chapter seventeen-a, seventeen-b, seventeen-c and seven-
22 teen-d of this code except sections one and two, article
23 four (hit and run) and sections one (negligent homicide),
24 two (driving under influence of alcohol, controlled sub-
25 stances or drugs) and four (reckless driving), article five,
26 chapter seventeen-c of this code.

27 (b) Any child shall be entitled to be admitted to bail
28 or recognizance in the same manner as a person over the
29 age of eighteen years and shall have the protection guar-
30 anteed by article three of the constitution of West Vir-
31 ginia.

32 (c) The child shall have the right to be effectively
33 represented by counsel at all stages of proceedings under
34 the provisions of this article. If the child, parent or cus-
35 todian executes an affidavit showing that he cannot pay
36 for an attorney appointed by the court or referee, the
37 court shall appoint counsel, to be paid as provided for in
38 article eleven, chapter fifty-one of this code.

39 (d) In all proceedings under this article, the child shall
40 be afforded a meaningful opportunity to be heard, includ-
41 ing the opportunity to testify and to present and cross-
42 examine witnesses. In all such proceedings the general
43 public shall be excluded except persons whose presence
44 is requested by a child or respondent and other persons
45 the court finds to have a legitimate interest.

46 Except as herein modified, at all adjudicatory hear-
47 ings, the rules of evidence applicable in criminal cases
48 shall apply, including the rule against written reports

49 based upon hearsay. Unless otherwise specifically pro-
50 vided in this chapter, all procedural rights afforded adults
51 in criminal proceedings shall be applicable. Extra-judicial
52 statements other than res gestae statements by a child
53 under sixteen years of age, made to law-enforcement
54 officials or while the child is in custody and outside the
55 presence of the child's counsel shall not be admissible. A
56 transcript or recording shall be made of all transfer, ad-
57 judicatory and dispositional hearings. At the conclusion
58 of any hearing, the court shall make findings of fact and
59 conclusions of law, and the same shall appear of record.

60 (e) The court reporter shall furnish a transcript of the
61 relevant proceedings to any indigent child who seeks
62 review of any proceeding under this article if an affidavit
63 is filed stating that the child and his parent or custodian
64 are unable to pay therefor.

**§49-5-1a. Jurisdiction of magistrate courts over persons under
eighteen years of age for certain offenses.**

1 For violations of chapter twenty of this code, magistrate
2 courts shall have concurrent jurisdiction with the circuit
3 court and persons under the age of eighteen years shall be
4 liable for punishment for violation of such laws in the
5 same manner as adults except that magistrate courts shall
6 have no jurisdiction to impose a sentence of confinement
7 for the violation of such laws.

**§49-5-1b. Jurisdiction of municipal courts over persons under
eighteen years of age.**

1 Notwithstanding any other section of this code to the
2 contrary, municipal courts shall have concurrent juvenile
3 jurisdiction with the circuit court only for alleged viola-
4 tions of municipal ordinances regulating traffic except that
5 municipal courts shall have no jurisdiction to impose a
6 sentence of confinement for the violation of such laws.

§49-5-2. Continuing jurisdiction of court.

1 As used in this article, a "child" shall include a per-
2 son under the age of eighteen years or a person subject

3 to the juvenile jurisdiction of the court pursuant to this
4 section. If a child sixteen years of age or older commits
5 an act which if committed by an adult would be a crime
6 and for such act is adjudged delinquent, the jurisdiction of
7 the court shall continue until the child becomes twenty
8 years of age with the same power over the child that the
9 court had prior to the child's becoming an adult, and the
10 further power to sentence such person to not more than
11 six months in jail if the offender is over the age of eigh-
12 teen years. This shall not preclude the exercise of criminal
13 jurisdiction in case the offender, after becoming an adult,
14 commits a violation of law. A child may be brought before
15 the circuit court for proceedings under this article by the
16 following means and no others:

17 (a) By juvenile petition praying that the child be ad-
18 judged neglected or delinquent;

19 (b) Certification or transfer to the juvenile jurisdiction
20 of the circuit court, from the criminal jurisdiction of such
21 court, from any foreign court or any court of this state
22 before which such child is brought charged with the
23 commission of a crime, as provided in section one, one-a or
24 one-b of this article;

25 (c) By warrant, capias or attachment issued by a judge,
26 referee or magistrate returnable to the circuit court,
27 charging a child with an act of delinquency.

§49-5-3. Noncustodial counseling of a child.

1 The court at any time, or the state department or other
2 official upon a request from a parent, guardian, or custo-
3 dian, may, without institution of proceedings under this
4 article, refer a child alleged to be delinquent to a coun-
5 selor at the state department or a community mental
6 health center or other professional counselor in the com-
7 munity. In the event the child refuses to respond to such
8 reference the state department may serve a notice by
9 first-class mail or personal service of process upon the
10 child, setting forth the facts and stating that the depart-
11 ment will seek a noncustodial order from the court direct-

12 ing the child to submit to counseling. The notice shall set
13 forth the time and place for the hearing on the matter.
14 The court or referee after hearing may direct the child to
15 participate in a noncustodial period of counseling not to
16 exceed six months. No information obtained as the result
17 of such counseling shall be admissible in a subsequent
18 proceeding under this article except a dispositional pro-
19 ceeding.

§49-5-3a. Informal adjustment counseling by probation officer.

1 (a) Before a petition is filed, the probation officer or
2 other officer of the court designated by it, subject to its
3 direction, may give counsel and advice to the parties
4 with a view to an informal adjustment if it appears:

5 (1) The admitted facts bring the case within the
6 jurisdiction of the court;

7 (2) Counsel and advice without an adjudication would
8 be in the best interest of the public and the child; and

9 (3) The child and his parents, guardian or other cus-
10 todian consent thereto with knowledge that consent is
11 not obligatory.

12 (b) The giving of counsel and advice cannot extend
13 beyond six months from the day commenced unless
14 extended by the court for an additional period.

§49-5-7. Institution of proceedings by petition; notice to child and parents; subpoena.

1 (a) A petition alleging that a child is a delinquent
2 child may be filed by a person who has knowledge of or
3 information concerning the facts alleged. The petition
4 shall be verified by the petitioner, shall set forth the
5 name and address of the child's parents, guardians or cus-
6 todians known to the petitioner unless the petitioner is the
7 natural parent, guardian or custodian and shall be filed in
8 the circuit court in the county where the alleged act of
9 delinquency occurred: *Provided*, That any proceeding
10 under this chapter may be removed, for good cause shown,
11 in accordance with the provisions of section one, article

12 nine, chapter fifty-six of this code. The court may refer
13 the matter to a state department worker or probation
14 officer for preliminary inquiry to determine whether the
15 matter can be resolved informally without the filing of a
16 petition. The petition shall contain: (1) Reference to the
17 specific statutory provisions of this chapter which give the
18 court jurisdiction of the proceeding; (2) specific allega-
19 tions of the conduct and facts upon which the petition is
20 based, including the approximate time and place of the
21 alleged conduct; (3) a statement of the right to have
22 counsel appointed and consult with counsel at every stage
23 of the proceedings; and (4) the relief sought.

24 Upon the filing of the petition, the court shall set a time
25 and place for a preliminary hearing as provided in section
26 nine of this article and may appoint counsel. A copy of the
27 petition and summons may be served upon the respondent
28 child by first class mail or personal service of process. If a
29 child does not appear in response to a summons served by
30 mail, no further proceeding may be held until the child is
31 served a copy of the petition and summons by personal
32 service of process. If such a child fails to appear in re-
33 sponse to a summons served in person upon him an order
34 of arrest may be issued by the court for that reason alone.

35 (b) The parents, guardians or custodians shall be named
36 in the petition as respondents, and shall be served with
37 notice of the proceedings in the same manner as provided
38 in subsection (a) of this section for service upon the child
39 and required to appear with the child at the time and
40 place set for the proceedings. If any such respondent
41 cannot be found after diligent search, service may be by
42 publication as a Class I legal advertisement in compliance
43 with the provisions of article three, chapter fifty-nine of
44 this code and the publication area shall be the county.
45 The respondent shall have fifteen days after the date of
46 publication to appear or answer.

47 (c) The court or referee may order the issuance of a
48 subpoena against the person having custody and control of
49 the child to bring the child before the court or referee.

50 (d) When any case of a child charged with the com-
51 mission of a crime is certified or transferred to the circuit
52 court or brought before the court by warrant pursuant to
53 section two of this article, the court or referee shall forth-
54 with cause the child and his parents, guardians or custo-
55 dians to be served with a petition, as provided in subsec-
56 tions (a) and (b) of this section. In the event the child
57 is in custody the petition shall be served upon the child
58 within ninety-six hours of the time custody began, or the
59 child shall be released from custody forthwith.

60 (e) The clerk of the court shall promptly notify the
61 state department of all proceedings under this article.

**§49-5-8. Taking a child into custody; detention hearing;
counsel.**

1 (a) In proceedings instituted by the filing of a juvenile
2 petition the circuit court may enter an order directing
3 that a child be taken into custody only if the petition
4 shows that grounds exist for the arrest of an adult
5 in identical circumstances or that the health, safety
6 and welfare of the child demand such custody. A deten-
7 tion hearing shall be held without delay, but in no
8 event shall the delay exceed the next succeeding judi-
9 cial day, excluding Saturday, and such child shall be
10 released on recognizance to his parent, guardian or
11 custodian unless findings are made as specified in sub-
12 section (d) of this section.

13 (b) Absent a warrant or court order, a child may be
14 taken into custody by a law-enforcement official only
15 if: (1) Grounds exist for the arrest of an adult in iden-
16 tical circumstances; (2) emergency conditions exist
17 which in the judgment of the officer pose imminent
18 danger to the health, safety and welfare of the child;
19 or (3) the official has reasonable grounds to believe that
20 the child is a runaway without just cause from the
21 child's parents or legal custodian and the health, safety
22 and welfare of the child is endangered. Upon taking a
23 child into custody, with or without a warrant or court
24 order, the official shall: (i) Immediately notify the

25 child's parent, custodian or, if the parent or custodian
26 cannot be located, a close relative; (ii) release the child
27 into the custody of his parent or custodian unless the
28 circumstances warrant otherwise; (iii) refer the matter
29 to the prosecuting attorney, state department or pro-
30 bation officer for proceedings under this article; and
31 (iv) if a child is being held in custody absent a warrant
32 or court order, cause a warrant, petition or order, as the
33 case may be, to be immediately issued authorizing the
34 detention of such child.

35 If a child is taken into custody pursuant to subdivision
36 (2) or (3) hereunder the state department shall be
37 immediately notified. Any child taken into custody as
38 a runaway shall not be held in custody more than forty-
39 eight hours without a court order, or more than seven
40 days in any event. Such child shall not be confined in
41 any facility wherein persons are being detained for
42 an offense which would be a crime if committed by an
43 adult.

44 (c) In the event that a child is delivered into the
45 custody of a sheriff or director of a detention facility,
46 such sheriff or director shall immediately notify the
47 court or referee. Said sheriff or director shall imme-
48 diately provide to every child who is delivered into his
49 custody, a written statement explaining the child's right
50 to a prompt detention hearing, his right to counsel in-
51 cluding appointed counsel if he cannot afford counsel
52 and his privilege against self-incrimination. In all cases
53 when a child is delivered into custody, the child shall
54 be released to his parent, guardian or custodian by the
55 end of the next succeeding judicial day, excluding Sat-
56 urday, after being delivered into such custody, unless
57 the child has been placed in detention pursuant to sub-
58 section (d) of this section.

59 (d) A child in custody must immediately be taken
60 before a referee or judge of the circuit court and in no
61 event shall a delay exceed the next succeeding judicial
62 day: *Provided*, That if there be no judge or referee then
63 present in the county, then such child shall be taken

64 immediately before any magistrate in the county for
65 the sole purpose of holding a detention hearing. The
66 judge or referee shall inform the child of his right to
67 remain silent, that any statement may be used against
68 him and of his right to counsel, and no interrogation
69 shall be made without the presence of a parent or
70 counsel. If the child or his parent, guardian or custodian
71 has not retained counsel, counsel shall be appointed as
72 soon as practicable. The referee or judge shall hear
73 testimony concerning the circumstances for taking the
74 child into custody and the possible need for detention
75 in accordance with section two, article five-a of this
76 chapter. The sole mandatory issue at the detention
77 hearing shall be whether the child shall be detained
78 pending further court proceedings. The court shall, if
79 advisable, and if the health, safety and welfare of the
80 child will not be endangered thereby, release the child
81 on recognizance to his parents, custodians or an appro-
82 priate agency; however, if warranted, the court may
83 require bail, except that bail may be denied in any case
84 where bail could be denied if the accused were an
85 adult.

86 The court or referee may, in conjunction with the
87 detention hearing, conduct a preliminary hearing pur-
88 suant to section nine, article five of this chapter: *Pro-*
89 *vided*, That all parties are prepared to proceed and the
90 child has counsel during such hearing.

§49-5-9. Preliminary hearing; counsel; improvement period.

1 (a) Following the filing of a juvenile petition, unless a
2 preliminary hearing has previously been held in conjunc-
3 tion with a detention hearing with respect to the same
4 charge contained in the petition, the circuit court or
5 referee shall hold a preliminary hearing. In the event that
6 the child is in custody, such hearing shall be held within
7 seven days of the time the child is taken into custody
8 unless good cause be shown for a continuance. If no
9 preliminary hearing is held within seven days of the
10 time the child is taken into custody, the child shall be
11 released on recognizance unless the hearing has been

12 continued for good cause. If the judge is in another
13 county in the circuit, the hearing may be conducted in
14 such other county. The preliminary hearing may be
15 waived by the child, upon advice of his counsel. At the
16 hearing, the court or referee shall:

17 (1) If the child is not represented by counsel, inform
18 the child and his parents, guardian or custodian or any
19 other person standing in loco parentis to him of the
20 child's right to be represented at all stages of proceedings
21 under this article and the right to have counsel appointed.

22 (2) Appoint counsel by order entered of record, if
23 counsel has not already been retained, appointed or
24 knowingly waived.

25 (3) Determine after hearing if there is probable cause
26 to believe that the child is a delinquent child. If probable
27 cause is not found, the child shall be released and the
28 proceedings dismissed. If probable cause is found, the
29 case shall proceed to adjudication. At the hearing or as
30 soon thereafter as is practicable, the date for the adjudi-
31 catory hearing shall be set to give the child, the child's
32 parents and attorney at least ten days' notice, unless notice
33 is waived by all parties.

34 (4) In lieu of placing the child in a detention facility
35 when bond is not provided, the court may place the child
36 in the temporary custody of the state department pursuant
37 to section sixteen, article two of this chapter or may
38 place the child in the custody of a probation officer.
39 If the child is detained in custody, the detention shall
40 not continue longer than thirty days without commence-
41 ment of the adjudicatory hearing unless good cause for
42 a continuance be shown by either party or, if a jury
43 trial be demanded, no longer than the next regular term
44 of said court.

45 (5) Inform the child of the right to demand a jury
46 trial.

47 (b) The child may move to be allowed an improve-
48 ment period for a period not to exceed one year. If the
49 court is satisfied that the best interest of the child is

50 likely to be served by an improvement period, the court
51 may delay the adjudicatory hearing and allow a non-
52 custodial improvement period upon terms calculated to
53 serve the rehabilitative needs of the child. At the con-
54 clusion of the improvement period, the court shall dismiss
55 the proceeding if the terms have been fulfilled; otherwise,
56 the court shall proceed to the adjudicatory stage. A
57 motion for an improvement period shall not be construed
58 as an admission or be used as evidence.

§49-5-10. Waiver and transfer of jurisdiction.

1 (a) Upon written motion of the prosecuting attorney
2 filed at least eight days prior to the adjudicatory hearing
3 and with reasonable notice to the child, the parents,
4 guardians, or custodians of the child, and the child's
5 counsel, the court shall conduct a hearing to determine
6 if juvenile jurisdiction should be waived and the pro-
7 ceeding should be transferred to the criminal jurisdiction
8 of the court. Any motion filed in accordance with this
9 section shall state, with particularity, the grounds for
10 the requested transfer, including the grounds relied upon
11 set forth in subsection (d) of this section, and the burden
12 shall be upon the state to establish such grounds by
13 clear and convincing proof. Any hearing held under the
14 provisions of this section shall be held within seven days
15 of the filing of the motion for transfer unless it is con-
16 tinued for good cause.

17 (b) No inquiry relative to admission or denial of the
18 allegations of the charge or the demand for jury trial
19 shall be made by or before the court until a decision
20 shall have been made relative to whether the proceeding
21 is to be transferred to criminal jurisdiction.

22 (c) The court shall transfer a juvenile proceeding to
23 criminal jurisdiction if a child who has attained the age
24 of sixteen years shall make a demand on the record to
25 be transferred to the criminal jurisdiction of the court.
26 Such cases may then be referred to a magistrate for trial,
27 if otherwise cognizable by a magistrate.

28 (d) The court may, upon consideration of the child's
29 mental and physical condition, maturity, emotional atti-

30 tude, home or family environment, school experience and
31 similar personal factors, transfer a juvenile proceeding
32 to criminal jurisdiction if there is probable cause to
33 believe that:

34 (1) The child has committed the crime of treason
35 under section one, article one, chapter sixty-one of this
36 code; the crime of murder under sections one, two and
37 three, article two, chapter sixty-one of this code; the
38 crime of robbery involving the use or presenting of fire-
39 arms or other deadly weapons under section twelve,
40 article two, chapter sixty-one of this code; the crime of
41 kidnapping under section fourteen-a, article two, chapter
42 sixty-one of this code; the crime of first degree arson
43 under section one, article three, chapter sixty-one of
44 this code; or charging sexual assault in the first degree
45 under section three, article eight-b, chapter sixty-one of
46 this code, and in such case, the existence of such probable
47 cause shall be sufficient grounds for transfer without
48 further inquiry; or

49 (2) A child has committed an offense of violence to
50 the person which would be felony if the child were an
51 adult: *Provided*, That the child has been previously
52 adjudged delinquent for the commission of an offense
53 which would be a violent felony if the child were an
54 adult; or

55 (3) A child has committed an offense which would be
56 a felony if the child were an adult: *Provided*, That the
57 child has been twice previously adjudged delinquent for
58 the commission of an offense which would be a felony
59 if the child were an adult; or

60 (4) A child, sixteen years of age or over, has com-
61 mitted an offense of violence to the person which would
62 be a felony if committed by an adult; or

63 (5) A child, sixteen years of age or over, has com-
64 mitted an offense which would be a felony if committed
65 by an adult: *Provided*, That such child has been previously
66 adjudged delinquent for an offense which would be a
67 felony if the child were an adult.

68 (e) If, after a hearing, the court directs the transfer
69 of any juvenile proceeding to criminal jurisdiction, it
70 shall state on the record the findings of fact and con-
71 clusions of law upon which its decision is based or shall
72 incorporate such findings of fact and conclusions of law
73 in its order directing transfer.

74 (f) The child shall have the right to directly appeal
75 an order of transfer to the supreme court of appeals of
76 the state of West Virginia: *Provided*, That notice of
77 intent to appeal and a request for transcript be filed
78 within ten days from the date of the entry of any such
79 order and the petition for appeal shall be presented to
80 the supreme court of appeals within forty-five days from
81 the entry of such order, and that, in default thereof, the
82 right of appeal and the right to object to such order of
83 transfer shall be waived and may not thereafter be
84 asserted. The provisions of article five, chapter fifty-
85 eight of this code pertaining to the appeals of judgments
86 in civil actions shall apply to appeals under this chapter
87 except as herein modified. The judge of the circuit court
88 may, prior to the expiration of such period of forty-five
89 days, by appropriate order, extend and re-extend such
90 period for such additional period or periods, not to exceed
91 a total extension of sixty days, as in his opinion may be
92 necessary for preparation of the transcript: *Provided*,
93 That the request for such transcript was made by the
94 party seeking appeal within ten days of entry of such
95 order of transfer. In the event any such notice of intent
96 to appeal and request for transcript be timely filed, pro-
97 ceedings in criminal court shall be stayed upon motion
98 of the defendant pending final action of the supreme
99 court of appeals thereon.

§49-5-11. Adjudication.

1 At the outset of an adjudicatory hearing, the court
2 shall inquire of the child whether he wishes to admit
3 or deny the allegations in the petition. The child may
4 elect to stand mute, in which event the court shall
5 enter a general denial of all allegations in the petition.

6 (a) If the respondent child admits the allegations of
7 the petition, the court shall consider the admission to be

8 proof of the allegations if the court finds (1) the re-
9 spondent fully understands all his rights under this
10 article, (2) the respondent voluntarily, intelligently and
11 knowingly admits all facts requisite for an adjudication
12 and (3) the respondent in his admission has not set
13 forth facts which constitute a defense to the allegations.

14 (b) If the respondent child denies the allegations,
15 the court shall dispose of all pretrial motions and the
16 court or jury shall proceed to hear evidence.

17 (c) If the allegations in the petition are admitted
18 or are sustained by proof beyond a reasonable doubt,
19 the court shall schedule the matter for disposition; other-
20 wise the petition shall be dismissed and the child dis-
21 charged from custody. Findings of fact and conclusions
22 of law addressed to all allegations in the petition shall
23 be stated on the record or reduced to writing and filed
24 with the record or incorporated into the order of the
25 court.

§49-5-12. Prosecuting attorney to represent petitioner.

1 The prosecuting attorney shall represent the peti-
2 tioner in all juvenile proceedings before the court,
3 referee or magistrate having juvenile jurisdiction.

§49-5-13. Disposition; appeal.

1 (a) In aid of disposition, the juvenile probation officer
2 or state department worker assigned to the court shall,
3 upon request of the court, make an investigation of the
4 environment of the child and the alternative dispositions
5 possible. The court, upon its own motion, or upon re-
6 quest of counsel, may order a psychological examination
7 of the child. The report of such examination and other
8 investigative and social reports shall not be made avail-
9 able to the court until after the adjudicatory hearing.
10 Unless waived, copies of the report shall be provided
11 to counsel for the petitioner and counsel for the child
12 no later than seventy-two hours prior to the dispositional
13 hearing.

14 (b) Following the adjudication, the court shall con-

15 duct the dispositional proceeding, giving all parties an
16 opportunity to be heard. In disposition the court shall
17 not be limited to the relief sought in the petition and
18 shall give precedence to the least restrictive of the
19 following alternatives consistent with the best interests
20 and welfare of the public and the child:

21 (1) Dismiss the petition;

22 (2) Refer the child and the child's parent or cus-
23 todian to a community agency for needed assistance
24 and dismiss the petition;

25 (3) Upon a finding that the child is in need of extra-
26 parental supervision (a) place the child under the super-
27 vision of a probation officer of the court or of the court
28 of the county where the child has its usual place of
29 abode, or other person while leaving the child in cus-
30 tody of his parent or custodian and (b) prescribe a
31 program of treatment or therapy or limit the child's
32 activities under terms which are reasonable and within
33 the child's ability to perform;

34 (4) Upon a finding that a parent or custodian is
35 not willing or able to take custody of the child, that
36 a child is not willing to reside in the custody of his
37 parent or custodian, or that a parent or custodian cannot
38 provide the necessary supervision and care of the child,
39 the court may place the child in temporary foster care
40 or temporarily commit the child to the state department
41 or a child welfare agency;

42 (5) Upon a finding that no less restrictive alternative
43 would accomplish the requisite rehabilitation of the
44 child, and upon an adjudication of delinquency pur-
45 suant to subdivision (1), section four, article one of this
46 chapter, commit the child to an industrial home or
47 correctional institution for children. Commitments shall
48 not exceed the maximum term for which an adult could
49 have been sentenced for the same offense, with discre-
50 tion as to discharge to rest with the director of the
51 institution, who may release the child and return him to
52 the court for further disposition;

53 (6) Upon an adjudication of delinquency pursuant
54 to subsection (3) or (4), section four, article one of this
55 chapter, and upon a finding that the child is so totally
56 unmanageable, ungovernable, and antisocial that the
57 child is amenable to no treatment or restraint short
58 of incarceration, commit the child to a rehabilitative
59 facility devoted exclusively to the custody and reha-
60 bilitation of children adjudicated delinquent pursuant
61 to said subsection (3) or (4). Commitments shall not
62 exceed the maximum period of one year with discretion
63 as to discharge to rest with the director of the institu-
64 tion, who may release the child and return him to the
65 court for further disposition; or

66 (7) After a hearing conducted under the procedures
67 set out in subsections (c) and (d), section four, article
68 five, chapter twenty-seven of the code, commit the
69 child to a mental health facility in accordance with the
70 child's treatment plan; the director may release a child
71 and return him to the court for further disposition.

72 (c) The disposition of the child shall not be affected
73 by the fact that the child demanded a trial by jury or
74 made a plea of denial. Any dispositional order is sub-
75 ject to appeal to the supreme court of appeals.

76 (d) Following disposition, it shall be inquired of
77 the respondent whether or not appeal is desired and
78 the response transcribed; a negative response shall not
79 be construed as a waiver. The evidence shall be tran-
80 scribed as soon as practicable and made available to the
81 child or his counsel, if the same is requested for pur-
82 poses of further proceedings. A judge may grant a stay
83 of execution pending further proceedings.

84 (e) Notwithstanding any other provision of this code
85 to the contrary, in the event a child charged with de-
86 linquency under this chapter is transferred to adult
87 jurisdiction and there tried and convicted, the court
88 may nevertheless, in lieu of sentencing such person as
89 an adult, make its disposition in accordance with this
90 section.

§49-5-14. Modification of dispositional orders.

1 A dispositional order of the court may be modified:

2 (1) Upon the motion of the probation officer, a state
3 department official or prosecuting attorney;

4 (2) Upon the request of the child or a child's parent
5 or custodian who alleges a change of circumstances
6 relating to disposition of the child.

7 Upon such a motion or request, the court shall con-
8 duct a review proceeding, except that if the last dis-
9 positional order was within the previous six months the
10 court may deny a request for review. Notice in writing
11 of a review proceeding shall be given to the child, the
12 child's parent or custodian and all counsel not less than
13 seventy-two hours prior to the proceeding. The court
14 shall review the performance of the child, the child's
15 parent or custodian, the child's social worker and other
16 persons providing assistance to the child or child's family.
17 If the motion or request for review of disposition is
18 based upon an alleged violation of a court order, the
19 court may modify the dispositional order to a more
20 restrictive alternative if it finds clear and convincing
21 proof of substantial violation. Otherwise, the dispositional
22 order may be modified only to one of the less restrictive
23 alternatives set forth in section thirteen of this article. No
24 child shall be required to seek a modification order as
25 provided in this section in order to exercise his right to
26 seek release by habeas corpus.

§49-5-15. Juvenile probation officers; duties; expenses; powers.

1 (a) The commissioner of the state department shall,
2 with the approval of the court, designate an employee
3 of the state department to act as a juvenile probation
4 officer, and when required one or more employees of the
5 state department to act as assistant to such probation
6 officer, and such employee or employees, when so as-
7 signed, shall perform their duties under the sole super-
8 vision and control of the court. There shall be at least
9 one such juvenile probation officer assigned to each

10 county, but a juvenile probation officer may be assigned
11 to more than one county. A juvenile probation officer
12 shall not be considered to be a law-enforcement official
13 under any provision of this chapter.

14 The foregoing provisions of this section shall not be
15 construed as abrogating or affecting in any way the
16 power and authority vested in any court, subject to the
17 approval of and in accordance with the rules of the
18 supreme court of appeals, to select, supervise and dis-
19 charge its own probation officers and assistants thereto.

20 (b) The clerk of a court shall notify, if practicable,
21 the chief probation officer of the county when a child
22 is brought before the court or judge. When notified, or
23 if the probation officer otherwise obtains knowledge
24 of such fact, he or one of his assistants shall:

25 (1) Make investigation of the case;

26 (2) Furnish such information and assistance as the
27 court or judge may require; and

28 (3) Take charge of the child before and after the trial,
29 as may be directed by the court or judge.

**§49-5-16. Committing children to jail and detention facilities;
standards.**

1 (a) A child under eighteen years of age shall not be
2 committed to a jail or police station, except that any child
3 over fourteen years of age who has been committed to an
4 industrial home or correctional institution may be held in
5 the juvenile department of a jail while awaiting transpor-
6 tation to the institution for a period not to exceed ninety-
7 six hours, and a child over fourteen years of age who is
8 charged with a crime which would be a violent felony if
9 committed by an adult, may, upon an order of the circuit
10 court, be housed in a juvenile detention portion of a
11 county facility, but not within sight of adult prisoners. A
12 child charged with or found to be delinquent solely under
13 subdivision (3), (4) or (5), section four, article one of
14 this chapter, shall not be housed in a detention or other

15 facility wherein persons are detained for criminal offenses
16 or for delinquency involving offenses which would be
17 crimes if committed by an adult: *Provided*, That a child
18 who is adjudicated delinquent under subsection (5),
19 section four, article one of this chapter and who has
20 violated an order of probation or a contempt order arising
21 out of a proceeding wherein the child was adjudicated
22 delinquent for an offense which would be a crime if
23 committed by an adult may not be housed in a detention
24 or other facility wherein persons are detained who have
25 not been adjudicated delinquent for such offenses.

26 (b) No child who has been convicted of an offense
27 under the adult jurisdiction of the circuit court shall be
28 held in custody in a penitentiary of this state: *Provided*,
29 *however*, That such child may be transferred from a
30 secure juvenile facility to a penitentiary after he shall
31 attain the age of eighteen years, if in the judgment of
32 the commissioner of the department of corrections and the
33 court which committed such child, such transfer is ap-
34 propriate.

§49-5-16a. Rules and regulations governing juvenile facilities.

1 The commissioner of corrections and the commissioner
2 of welfare shall each prescribe written rules and regula-
3 tions subject to the provisions of chapter twenty-nine-a of
4 this code, outlining policies and procedures governing the
5 operation of those correctional, detention and other facili-
6 ties in their respective departments wherein juveniles
7 may be housed. Said policies and procedures shall include,
8 but shall not be limited to, standards of cleanliness, tem-
9 perature and lighting; availability of medical and dental
10 care; provision of food, furnishings, clothing and toilet
11 articles; supervision; procedures for enforcing rules of
12 conduct consistent with due process of law, and visitation
13 privileges. On and after January one, one thousand nine
14 hundred seventy-nine, a child in custody or detention
15 shall have, at a minimum, the following rights, and the
16 policies prescribed shall ensure that:

17 (1) A child shall not be punished by physical force,

18 deprivation of nutritious meals, deprivation of family
19 visits or solitary confinement;

20 (2) A child shall have the opportunity to participate in
21 physical exercise each day;

22 (3) Except for sleeping hours a child in a state facility
23 shall not be locked alone in a room unless such child is
24 out of control;

25 (4) A child shall be provided his own clothing or in-
26 dividualized clothing which is clean, supplied by the facil-
27 ity, and daily access to showers;

28 (5) A child shall have constant access to writing mate-
29 rials and may send mail without limitation, censorship or
30 prior reading, and may receive mail without prior reading,
31 except that mail may be opened in the child's presence,
32 without being read, to inspect for contraband;

33 (6) A child may make and receive regular local phone
34 calls without charge and long distance calls to his family
35 without charge at least once a week, and receive visitors
36 daily and on a regular basis;

37 (7) A child shall have immediate access to medical care
38 as needed;

39 (8) A child in a juvenile detention facility or state insti-
40 tution shall be provided access to education including
41 teaching, educational materials and books;

42 (9) A child shall have reasonable access to an attorney
43 upon request; and

44 (10) A child shall be afforded a grievance procedure,
45 including an appeal mechanism.

46 Upon admission to a jail, detention facility or institu-
47 tion, a child shall be furnished with a copy of the rights
48 provided him by virtue of this section and as further pre-
49 scribed by rules promulgated pursuant to this section.

**§49-5-16b. Juvenile facilities review panel; compensation;
expenses.**

1 The supreme court of appeals shall appoint and main-

2 tain a five-member panel, consisting of five persons who
3 are willing to serve in such capacity, to visit, inspect
4 and interview residents of all juvenile institutions, de-
5 tention facilities and places in the state wherein juveniles
6 may be held involuntarily, to make public reports of
7 such reviews, and to perform such other duties as shall
8 be prescribed by the governor. The members so ap-
9 pointed shall serve without compensation for their time,
10 however, each member may be reimbursed for reason-
11 able and necessary expenses in the performance of their
12 duties under this article.

13 Copies of the panel's report shall be submitted an-
14 nually to the president of the Senate and the speaker
15 of the House of Delegates.

§49-5-17. Expungement of records; no discrimination.

1 (a) One year after the child's eighteenth birthday,
2 or one year after personal or juvenile jurisdiction shall
3 have terminated, whichever is later, the records of a
4 juvenile proceeding conducted under this chapter, in-
5 cluding law-enforcement files and records, fingerprints,
6 physical evidence and all other records pertaining to
7 said proceeding shall be expunged by operation of law.
8 When records are expunged, they shall be returned to
9 the court in which the case was pending and kept in
10 a separate confidential file and not opened except upon
11 order of the court.

12 (b) Expungement shall be accomplished by physi-
13 cally marking the records to show that such records
14 have been expunged, and by the secure sealing and
15 filing of said records in such a manner that no one can
16 determine the identity of said juvenile except as pro-
17 vided in subsection (d) of this section. Expungement
18 shall have the legal effect as if the offense never oc-
19 curred.

20 (c) The child's counsel, parent, guardian or custodian,
21 the court, law-enforcement agencies and other public and
22 private agencies, in response to a request for record
23 information, shall reply that juvenile records are not

24 public records and are available only by order of the
25 circuit court in which the case was pending.

26 (d) Notwithstanding this or any other provision of
27 this code to the contrary, juvenile records and law-
28 enforcement records shall not be disclosed or made
29 available for inspection, except that the court may, by
30 written order pursuant to a written petition, permit
31 disclosure or inspection when:

32 (1) A court having juvenile jurisdiction has the child,
33 before it in a juvenile proceeding;

34 (2) A court exercising criminal jurisdiction over the
35 child requests such records for the purpose of a pre-
36 sentence report or other dispositional proceeding;

37 (3) The child or counsel for the child requests dis-
38 closure or inspection of such records;

39 (4) The officials of public institutions to which a child
40 is committed require such records for transfer, parole or
41 discharge considerations; or

42 (5) A person doing research requests disclosure, on
43 the condition that information which would identify the
44 child or family involved in the proceeding shall not be
45 divulged.

46 (e) No individual, firm, corporation or other entity
47 shall, on account of a person's prior involvement in a
48 proceeding under this article, discriminate against any
49 person in access to, terms of, or conditions of employ-
50 ment, housing, education, credit, contractual rights or
51 otherwise.

52 (f) No records of a juvenile convicted under the
53 criminal jurisdiction of the court pursuant to subdivi-
54 sion one, subsection (d), section ten of this article shall
55 be expunged.

56 (g) Any person who willfully violates this section
57 shall be guilty of a misdemeanor, and, upon conviction
58 thereof, shall be fined not more than one thousand
59 dollars, or confined in jail not more than six months,

60 or both such fine and imprisonment, and shall be liable
 61 for damages in the amount of three hundred dollars or
 62 actual damages, whichever is greater.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-3. Orders of juvenile referee or judge following detention hearing;
 force and effect and finality of such orders.

§49-5A-5. Detention in other counties.

**§49-5A-3. Orders of juvenile referee or judge following detention
 hearing; force and effect and finality of such
 orders.**

1 After a detention hearing conducted by a judge, magis-
 2 trate or referee an order shall be forthwith entered setting
 3 forth the findings of fact and conclusions of law with
 4 respect to further detention pending hearing and disposi-
 5 tion of the child proceedings involving such juvenile.
 6 A copy of such order shall be furnished to the court, if
 7 entered by a referee, and to the child and his attorney,
 8 if any, and to the parent or parents or guardian of the
 9 child. A detention order of a judge or referee shall be-
 10 come effective immediately, subject to the right of review
 11 provided for in section four of this article, and shall
 12 continue in effect until modified or vacated by the judge.

§49-5A-5. Detention in other counties.

1 If further detention is ordered, the court may order
 2 or referee direct such child to be detained in a facility
 3 other than a jail in a county other than the county in
 4 which such court sits if no facility other than a jail
 5 exists in the county wherein the court sits.

**ARTICLE 6B. APPOINTMENT OF SPECIAL GUARDIAN TO SECURE
 MEDICAL TREATMENT FOR PERSONS UNDER
 EIGHTEEN YEARS OF AGE.**

§49-6B-1. Petition for appointment of special guardian; requirements.

§49-6B-2. Notice of petition.

§49-6B-3. Discharge of special guardian.

§49-6B-4. Immunity from civil liability.

**§49-6B-1. Petition for appointment of special guardian; re-
 quirements.**

1 Upon the verified petition of any person showing: (a)

2 That any person under the age of eighteen years is
3 threatened with or there is a substantial possibility that
4 such person will suffer death, serious or permanent physi-
5 cal or emotional disability, disfigurement or suffering,
6 and (b) that such disability, disfigurement or suffering
7 is the result of the failure or refusal of any parent,
8 guardian or custodian to procure, consent to or authorize
9 necessary medical treatment, the circuit court of the
10 county in which such person is located may direct the
11 appointment of a special guardian for the purposes of
12 procuring, consenting to and giving authorization for the
13 administration of necessary medical treatment. The cir-
14 cuit court shall not consider any petition filed in accor-
15 dance with this section unless it shall be accompanied by
16 a supporting affidavit of a licensed physician.

§49-6B-2. Notice of petition.

1 So far as practicable, the parents, guardian or custodian
2 of any person for whose benefit medical treatment is
3 sought shall be given notice of the petition for the ap-
4 pointment of a special guardian under this article:
5 *Provided*, That such notice shall not be necessary if it
6 would cause such delay as would result in the death or
7 irreparable harm to the person for whose benefit medical
8 treatment is sought. Such notice may be given in such
9 form and manner as may be necessary under the circum-
10 stances.

§49-6B-3. Discharge of special guardian.

1 Upon the termination of necessary medical treatment
2 to any person under this article, the circuit court shall,
3 by order, direct the discharge of the special guardian
4 from any further authority, responsibility or duty.

§49-6B-4. Immunity from civil liability.

1 No person appointed special guardian in accordance
2 with the provisions of this article shall be civilly liable
3 for any act done by virtue of the authority vested in
4 him by order of the circuit court.

ARTICLE 7. GENERAL PROVISIONS.**§49-7-1. Confidentiality of records.**

1 All records of the state department, the court and its
2 officials, law-enforcement agencies and other agencies
3 or facilities concerning a child as defined in this chapter
4 shall be kept confidential and shall not be released:
5 *Provided*, That such records, except adoption records,
6 juvenile court records and records disclosing the identity
7 of a complainant of child abuse or neglect, shall be made
8 available (1) where authorized by this chapter; (2) to
9 the child, parent, or the attorney of the child or parent,
10 whether or not in connection with judicial proceedings;
11 (3) with the written consent of the child or of someone
12 authorized to act in the child's behalf; or (4) pursuant to
13 subpoena or order of a court of record: *Provided, however*,
14 That a subpoena for such records may be quashed if the
15 court determines that disclosure is not for a bona fide
16 purpose and compromises the confidentiality intended by
17 this section. The official court file pertaining to the person
18 who is the subject of a neglect or abuse proceeding shall
19 be open for inspection only to the child, the child's
20 parent or custodian, their counsel and other parties to
21 the proceedings before the court. No record or informa-
22 tion shall be transmitted to any federal or state agency
23 except as specifically provided herein.

24 Except in juvenile proceedings which are transferred
25 to criminal proceedings, law-enforcement records and
26 files concerning a child shall be kept separate from the
27 records and files of adults and not included within the
28 court files. Law-enforcement records and files concerning
29 a child shall be open to inspection pursuant to the pro-
30 visions of section seventeen, article five of this chapter.

31 Any person who willfully violates this section shall be
32 guilty of a misdemeanor, and, upon conviction thereof,
33 shall be fined not more than one thousand dollars, or
34 confined in jail not more than six months, or both such
35 fine and imprisonment, and shall be liable for damages
36 in the amount of three hundred dollars or actual damages,
37 whichever is greater.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 13. CORRECTIONS MANAGEMENT.****§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.**

1 The commissioner of corrections shall supervise all
2 persons released on probation and placed in the charge
3 of a state probation and parole officer and all persons
4 released on parole under any law of this state with the
5 exception of those persons paroled pursuant to section
6 thirteen, article two, chapter forty-nine of this code.
7 The commissioner shall have authority to revoke the
8 parole with appropriate due process. He shall also super-
9 vise all probationers and parolees whose supervision
10 may have been undertaken by this state by reason
11 of any interstate compact entered into pursuant to the
12 uniform act for out-of-state parolee supervision. The
13 commissioner shall prescribe rules and regulations for
14 the supervision of probationers and parolees under his
15 supervision and control, and shall succeed to all ad-
16 ministrative and supervisory powers of the board of
17 probation and parole and the authority of said board of
18 probation and parole in such matters only.

19 The commissioner of corrections shall administer all
20 other laws affecting the custody, control, treatment and
21 employment of persons sentenced or committed to in-
22 stitutions under the supervision of the department or
23 affecting the operation and administration of institutions
24 or functions of the department.

25 The final determination regarding the release of in-
26 mates from penal institutions and the final determination
27 regarding revocation of parolees from such institutions
28 pursuant to the provisions of article twelve, chapter sixty-
29 two of the code of West Virginia, one thousand nine hun-
30 dred thirty-one, as amended, shall remain within the ex-
31 clusive jurisdiction of the board of probation and parole.

CHAPTER 15

(Com. Sub. for H. B. 799—By Mrs. Withrow and Mrs. Rotgin)

[Passed March 9, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to establishing a system of subsidized adoption for certain children; requiring the department of welfare to provide subsidies in the form of money or services to children who are in special circumstances which tend to prohibit their adoption; listing conditions of eligibility for the subsidy; requiring a contract between adoptive parents and the department of welfare; describing forms of subsidies; and prohibiting subsidies in excess of assistance paid to foster families for care of children in similar circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.

§49-2-17 Subsidized adoption.

1 From funds appropriated to the department of welfare, the
2 commissioner shall establish a system of assistance for facili-
3 tating the adoption of children who are dependents of the
4 department or a child welfare agency licensed to place
5 children for adoption, legally free for adoption and in special
6 circumstances either because they:

7 (a) Have established emotional ties with prospective adop-
8 tive parents while in their care; or

9 (b) Are not likely to be adopted by reason of one or
10 more of the following conditions:

- 11 (1) They have a physical or mental disability;
- 12 (2) They are emotionally disturbed; or
- 13 (3) They are older children; or
- 14 (4) They are a part of a sibling group; or
- 15 (5) They are a member of a racial or ethnic minority; or
- 16 (6) They have any combination of these conditions.

17 The department shall provide assistance in the form of sub-
18 sidies or other services to parents who are found and approved
19 for adoption of a child certified as eligible for subsidy by the
20 department, but before the final decree of adoption is entered,
21 there must be a written agreement between the family entering
22 into the subsidized adoption and the department. Adoption
23 subsidies in individual cases may commence with the adoption
24 placement, and will vary with the needs of the child as well as
25 the availability of other resources to meet the child's needs. The
26 subsidy may be for special services only, or for money pay-
27 ments, and either for a limited period, or for a long term, or for
28 any combination of the foregoing. The specific financial terms
29 of the subsidy shall be included in the agreement between the
30 department and the adopting parents. The amount of the time-
31 limited or long-term subsidy may in no case exceed that which
32 would be allowable from time to time for such child under
33 foster family care, or, in the case of a special service, the
34 reasonable fee for the service rendered.

35 Whenever significant emotional ties have been established
36 between a child and his foster parents, and the foster parents
37 seek to adopt the child, the child shall be certified as eligible
38 for a subsidy conditioned upon his adoption under applicable
39 adoption procedures by the foster parents.

40 In all other cases, after reasonable efforts have been made
41 without the use of subsidy and no appropriate adoptive family
42 has been found for the child, the department shall certify
43 the child as eligible for a subsidy in the event of adoption.

44 If the child is the dependent of a voluntary licensed child-
45 placing agency, that agency shall present to the department
46 evidence of significant emotional ties between the child and

47 his foster parents or evidence of inability to place the child
 48 for adoption. In no event shall the value of the services
 49 and assistance provided by the department under an agree-
 50 ment pursuant to this section exceed the value of assistance
 51 available to foster families in similar circumstances. All
 52 records regarding subsidized adoptions shall be held in
 53 confidence, however, records regarding the payment of public
 54 funds for subsidized adoptions shall be available for public
 55 inspection provided they do not directly or indirectly identify
 56 any child or persons receiving funds for such child.

CHAPTER 16

(H. B. 1669—By Mr. Kincaid and Mr. Teets)

[Passed March 10, 1978; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the nonintoxicating beer commission; department of education; governor's office of economic and community development; department of natural resources; department of corrections; department of health (division of mental health); state auditor; board of regents; department of motor vehicles; department of agriculture; board of vocational education (division of vocational rehabilitation); department of public safety; office of emergency services; state tax department; department of welfare; and department of highways, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact and
 2 recommendations reported to it by the court of claims con-
 3 cerning various claims against the state and agencies thereof,

4 and in respect to each of the following claims the Legislature
 5 adopts those findings of fact as its own, and hereby declares
 6 it to be the moral obligation of the state to pay each such
 7 claim in the amount specified below, and directs the auditor
 8 to issue warrants for the payment thereof out of any fund
 9 appropriated and available for the purpose.

- 10 (a) Claim against the Nonintoxicating Beer Commission:
 11 (To be paid from General Revenue Fund)
- 12 (1) Lonnie W. Bradbury \$ 1,569.20
- 13 (b) Claim against the Department of Education,
 14 Division of Vocational Education:
 15 (To be paid from General Revenue Fund)
- 16 (1) Dunbar Printing Company \$ 759.20
- 17 (c) Claims against the Governor's Office of
 18 Economic and Community Development:
 19 (To be paid from General Revenue Fund)
- 20 (1) Jones Printing Company, Inc. \$ 235.00
 21 (2) Sam Siclair, d/b/a Galion Canvas
 22 Products Company \$ 808.80
- 23 (d) Claims against the Department of Natural
 24 Resources:
 25 (To be paid from General Revenue Fund)
- 26 (1) Mrs. Richard L. Cooper \$ 475.00
 27 (2) Raleigh Motor Sales, Inc. \$ 1,452.36
 28 (3) Jerry Austin Rexrode \$ 2,943.72
 29 (4) Edith Ann Thompson &
 30 Roger Dale Thompson \$ 9,627.36
- 31 (e) Claims against the Department of
 32 Corrections:
 33 (To be paid from General Revenue Fund)
- 34 (1) Boone Remodeling Co. \$ 16,930.00
 35 (2) Cecil E. Jackson Equipment, Inc. \$ 415.24
 36 (3) Friden Mailing Equipment Corporation .. \$ 147.00
 37 (4) S. B. Wallace & Co. \$ 157.49

38	(f) Claims against the Department of Health,		
39	Division of Mental Health:		
40	(To be paid from General Revenue Fund)		
41	(1) Clendenin Lumber & Supply Company ----	\$	458.85
42	(2) Peggy S. Gott	\$	4,332.00
43	(3) Otis Elevator Company	\$	95.00
44	(4) Polis Brothers	\$	239.90
45	(5) Mary Jo Sharp	\$	458.00
46	(6) Travenol Laboratories, Inc.	\$	53.52
47	(g) Claims against the State Auditor:		
48	(To be paid from General Revenue Fund)		
49	(1) Phyllis J. Rutledge, Circuit Clerk of		
50	Kanawha County, West Virginia	\$	314.00
51	(h) Claims against the Board of Regents:		
52	(To be paid from General Revenue Fund)		
53	(1) Direct Mail Service Co.	\$	750.00
54	(2) Jacquelyn B. Eisenberg, parent and next		
55	friend of Mark Harrold Eisenberg	\$	1,500.00
56	(3) Sanders Floor Covering, Inc.	\$	1,819.00
57	(4) Thompson's of Morgantown, Inc.	\$	901.77
58	(i) Claims against the Department of Motor		
59	Vehicles:		
60	(To be paid from State Road Fund)		
61	(1) Sandra S. Clemente	\$	73.75
62	(2) George M. Custer	\$	300.00
63	(3) IBM Corporation	\$	123.65
64	(4) Moore Business Forms, Inc.	\$	195.97
65	(5) Anthony R. Rosi	\$	271.60
66	(6) 3M Business Products Sales, Inc.	\$	957.50
67	(j) Claims against the Department of		
68	Agriculture:		
69	(To be paid from General Revenue Fund)		
70	(l) Hogan Storage & Transfer Company ----	\$	6,000.00

71	(k) Claims against the Board of Vocational		
72	Education, Division of Vocational		
73	Rehabilitation:		
74	(To be paid from General Revenue Fund)		
75	(1) Arthritis Care Associates	\$	25.40
76	(2) Kanawha Valley Radiologists, Inc.	\$	109.00
77	(3) New Martinsville/Wetzel County Emergency		
78	Squad, Inc.	\$	162.00
79	(1) Claim against the Department of Public		
80	Safety:		
81	(To be paid from General Revenue Fund)		
82	(1) H. M. Hills, Jr. & Luis A. Loimil	\$	105.00
83	(m) Claim against the Office of Emergency		
84	Services:		
85	(To be paid from General Revenue Fund)		
86	(1) Richard L. Weekly	\$	2,170.83
87	(n) Claim against the State Tax Department:		
88	(To be paid from General Revenue Fund)		
89	(1) Donald M. Bondurant	\$	5,585.34
90	(o) Claim against the Department of Welfare:		
91	(To be paid from General Revenue Fund)		
92	(1) Thomas F. Lambert	\$	457.60
93	(p) Claims against the Department of Highways:		
94	(To be paid from State Road Fund)		
95	(1) Elvin S. Alford	\$	2,800.00
96	(2) Curtis Allison	\$	244.85
97	(3) David E. Alvis	\$	99.85
98	(4) Appalachian Power Co.	\$	2,303.35
99	(5) Frank G. Barr	\$	595.68
100	(6) Olie G. Bastin and Priscilla Bastin	\$	4,500.00
101	(7) Raymond N. Belmont	\$	80.00
102	(8) Downer B. Boley	\$	926.83
103	(9) Boone Sales, Inc.	\$	1,100.00
104	(10) Charles A. Bowman	\$	154.50

105	(11)	Minnie Lee Brown	\$	4,500.00
106	(12)	Darrell E. Buckner &		
107		Betty S. Buckner	\$	63.46
108	(13)	Eleanor F. Charbeneau &		
109		Eleanor B. Charbeneau	\$	253.45
110	(14)	David L. Clark, Sr.	\$	5,572.00
111	(15)	Michael H. Coen and Ruth Coen	\$	65,000.00
112	(16)	Ishmael Collins	\$	500.00
113	(17)	Virginia Sue Cook	\$	112.27
114	(18)	Clyde W. Cummings &		
115		Betty L. Cummings	\$	1,030.00
116	(19)	Billy Joe Davis	\$	750.00
117	(20)	Frank Davis and Billy Joe Davis,		
118		d/b/a Davis Auto Parts	\$	21,125.00
119	(21)	Clarence V. Eastes, Jr.	\$	144.20
120	(22)	Albert D. Fentress and		
121		Hazel S. Fentress	\$	122.68
122	(23)	Bradford G. Frazier	\$	160.48
123	(24)	Timothy J. Grimmett	\$	271.44
124	(25)	Michael J. Hart	\$	46.49
125	(26)	Hartford Accident &		
126		Indemnity Company	\$	21,326.50
127	(27)	Robert M. Hastings & Linda Hastings,		
128		d/b/a Hastings Stables	\$	365.00
129	(28)	Barbara Henson	\$	128.14
130	(29)	Clifford E. Honsaker, Jr.	\$	10.14
131	(30)	Kermit Reed Hubbs	\$	435.90
132	(31)	McHenry Hudnall, Jr.	\$	147.73
133	(32)	Robert H. Johnson	\$	900.00
134	(33)	Marvin Kidd	\$	52.50
135	(34)	Moses Kolesar	\$	6,500.00
136	(35)	Theodore Korthals & Emile Korthals ...	\$	3,500.00
137	(36)	Eugene Lafferty and Wanda Lafferty ...	\$	10,500.00
138	(37)	Linda Lester and Leon Lester	\$	187.63
139	(38)	Gerald J. Lynch	\$	206.76
140	(39)	Hugh C. Mayfield	\$	400.00
141	(40)	Arthur Maynard and Mollie Maynard ...	\$	2,475.00
142	(41)	Norman Maynard & Shirley Maynard ...	\$	1,250.00
143	(42)	Helen L. Norvell, Executrix of the Estate		
144		of Glen Hartsel Norvell, deceased	\$	15,000.00

145	(43) Arizona M. Offutt	\$ 1,625.00
146	(44) John C. Perkins, Jr. and Wanda Perkins	\$ 72.30
147	(45) Anna Jane Phillips	\$ 82.40
148	(46) Thelma Ratcliff & William Glen Ratcliff	\$ 4,500.00
149	(47) Ray R. Reed and Sharon Reed	\$ 5,000.00
150	(48) Franklin Ross and Elsie M. Ross	\$ 347.80
151	(49) Charles E. Schooley	\$ 7,000.00
152	(50) Saleem A. Shah and Theresa A. Shah	\$ 3,500.00
153	(51) Carolyn Crisp Sherwood	\$ 237.00
154	(52) Mary Jo Shreve	\$ 100.00
155	(53) Lawrence Craig Skaggs	\$ 102.23
156	(54) State Chemical Manufacturing Co.	\$ 2,217.50
157	(55) Fred K. Testa and Claudia I. Testa	\$ 4,500.00
158	(56) Paul Edward Tucker	\$ 93.32
159	(57) Marvin Roy Welch	\$ 50.00
160	(58) Whitmyer Brothers, Inc.	\$110,082.53
161	(59) John R. Wilder and Norma J. Wilder	\$ 233.36
162	Total of all claims	\$378,565.32

163 The Legislature finds that the above moral obligations and
 164 the appropriation made in satisfaction thereof shall be the full
 165 compensation for all claimants, and that prior to the payments
 166 to any claimant provided for in this bill, the court of claims
 167 shall receive a release from said claimant releasing any and
 168 all claims for moral obligations arising from the matters con-
 169 sidered by the Legislature in the finding of the moral obliga-
 170 tions and the making of the appropriations for said claimant.
 171 The court of claims shall deliver all releases obtained from
 172 claimants to the department against which the claim was
 173 allowed.

CHAPTER 17

(H. B. 1676—By Mrs. Withrow and Mr. Kincaid)

[Passed March 10, 1978; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of health, department of corrections, and the department of motor vehicles, to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that
 2 the state has received the benefit of the commodities and
 3 services rendered by certain claimants herein and has con-
 4 sidered claims against the state, the department of health, de-
 5 partment of corrections and department of motor vehicles,
 6 agencies thereof, which have arisen due to over-expenditures
 7 of departmental appropriations by officers of such state spend-
 8 ing unit, such claims having been previously considered by
 9 the court of claims which also found that the state has re-
 10 ceived the benefit of the commodities and services rendered
 11 by each claimant, but were denied by the court of claims on
 12 the purely statutory grounds that to allow such claims would
 13 be condoning illegal acts contrary to the laws of the state. The
 14 Legislature, pursuant to its findings of fact and also by the
 15 adoption of the findings of fact by the court of claims as its
 16 own, and, while not condoning such illegal acts, hereby de-
 17 clares it to be the moral obligation of the state to pay each
 18 such claim in the amount specified below, and directs the
 19 auditor to issue warrants upon receipt of a properly executed
 20 requisition supported by an itemized invoice, statement or
 21 other satisfactory document as required by section ten, article
 22 three, chapter twelve of the code of West Virginia, one thou-
 23 sand nine hundred thirty-one, as amended, for the payment
 24 thereof out of any fund appropriated and available for the
 25 purpose.

26 (a) Claims against the department of health:

27 (To be paid from General Revenue Fund)

28	(1) Lewis Edmon Cox	\$	185.64
29	(2) Ruth McPherson		1,267.25
30	(3) John C. Racer		178.80
31	(4) Physicians Fee Office		2,145.23

32	(5) Pedro N. Ambrosio, M.D. _____	272.00
33	(6) Pfizer Corporation, Roerig Division _____	608.00
34	(b) Claims against the department of corrections:	
35	(1) Graves-Humphreys, Inc. _____	1,604.99
36	(2) C. H. James & Co., Div. of	
37	James Produce Co., Inc. _____	39.91
38	(3) Department of Highways _____	3,040.00
39	(4) Lashley Tractor Sales _____	513.47
40	(c) Claims against the department of motor vehicles:	
41	(1) West Virginia Public Employees	
42	Insurance Board _____	5,563.68
43	Total _____	\$ 15,418.97

CHAPTER 18

(H. B. 1666—By Mr. Boettner)

[Passed March 9, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred twenty-two, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia consumer credit and protection act; definition of terms; defining two terms pertaining to debt collection practices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-122. Definitions.

- 1 For the purposes of this section and sections one hundred
- 2 twenty-three, one hundred twenty-four, one hundred twenty-

3 five, one hundred twenty-six, one hundred twenty-seven, one
4 hundred twenty-eight and one hundred twenty-nine of this
5 article, the following terms shall have the following meanings:

6 (a) "Consumer" means any natural person obligated or
7 allegedly obligated to pay any debt.

8 (b) "Claim" means any obligation or alleged obligation
9 of a consumer to pay money arising out of a transaction in
10 which the money, property, insurance or service which is
11 the subject of the transaction is primarily for personal, family
12 or household purposes, whether or not such obligation has
13 been reduced to judgment.

14 (c) "Debt collection" means any action, conduct or prac-
15 tice of soliciting claims for collection or in the collection
16 of claims owed or due or alleged to be owed or due to a
17 creditor by a consumer.

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

CHAPTER 19

(S. B. 114—By Mr. Brotherton, Mr. President)

[Passed March 10, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six, two hundred eight and two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the uniform controlled substances act generally and standards and schedules specifically; relating to the addition, rescheduling and deletion of controlled substances in Schedules I, II, III and IV; and listing certain controlled substances in Schedules I, II, III and IV.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

§60A-2-206. Schedule II.

§60A-2-208. Schedule III.

§60A-2-210. Schedule IV.

§60A-2-204. Schedule I.

1 (a) The controlled substances listed in this section
2 are included in Schedule I.

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any of the following opiates, including
5 its isomers, esters, ethers, salts and salts of isomers,
6 esters, and ethers whenever the existence of such isomers,
7 esters, ethers, and salts is possible within the specific
8 chemical designation:

- 9 (1) Acetylmethadol;
10 (2) Allylprodine;
11 (3) Alphacetylmethadol;
12 (4) Alphameprodine;
13 (5) Alphamethadol;
14 (6) Benzethidine;
15 (7) Betacetylmethadol;
16 (8) Betameprodine;
17 (9) Betamethadol;
18 (10) Betaprodine;
19 (11) Clonitazene;
20 (12) Dextromoramide;
21 (13) Diampromide;
22 (14) Diethylthiambutene;
23 (15) Difenoxin;
24 (16) Dimenoxadol;
25 (17) Dimepheptanol;
26 (18) Dimethylthiambutene;
27 (19) Dioxaphetyl butyrate;

- 28 (20) Dipipanone;
- 29 (21) Ethylmethylthiambutene;
- 30 (22) Etonitazene;
- 31 (23) Etosexidine;
- 32 (24) Furethidine;
- 33 (25) Hydroxypethidine;
- 34 (26) Ketobemidone;
- 35 (27) Levomoramide;
- 36 (28) Levophenacymorphan;
- 37 (29) Morpheridine;
- 38 (30) Noracymethadol;
- 39 (31) Norlevorphanol;
- 40 (32) Normethadone;
- 41 (33) Norpipanone;
- 42 (34) Phenadoxone;
- 43 (35) Phenampromide;
- 44 (36) Phenomorphan;
- 45 (37) Phenoperidine;
- 46 (38) Piritramide;
- 47 (39) Proheptazine;
- 48 (40) Properidine;
- 49 (41) Propiram;
- 50 (42) Racemoramide;
- 51 (43) Trimeperidine.

52 (c) Unless specifically excepted or unless listed in
53 another schedule, any of the following opium derivatives,
54 its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible
55 within the specific chemical designation:
56

- 57 (1) Acetorphine;
- 58 (2) Acetyldihydrocodeine;
- 59 (3) Benzylmorphine;
- 60 (4) Codeine methylbromide;
- 61 (5) Codeine-N-Oxide;
- 62 (6) Cyprenorphine;
- 63 (7) Desomorphine;
- 64 (8) Dihydromorphine;
- 65 (9) Drotebanol;
- 66 (10) Etorphine (except HCL Salt);
- 67 (11) Heroin;

- 68 (12) Hydromorphinol;
69 (13) Methyldesorphine;
70 (14) Methyldihydromorphine;
71 (15) Morphine methylbromide;
72 (16) Morphine methylsulfonate;
73 (17) Morphine-N-Oxide;
74 (18) Myrophine;
75 (19) Nicocodeine;
76 (20) Nicomorphine;
77 (21) Normorphine;
78 (22) Phoclodine;
79 (23) Thebacon.
- 80 (d) Unless specifically excepted or unless listed in
81 another schedule, any material, compound, mixture or
82 preparation, which contains any quantity of the following
83 hallucinogenic substances, or which contains any of the
84 salts, isomers and salts of isomers of any thereof whenever
85 the existence of such salts, isomers and salts of isomers
86 is possible within the specific chemical designation and
87 for the purposes of this subsection only, "isomer" in-
88 cludes the optical position and geometric isomers:
- 89 (1) 2,5-dimethoxyamphetamine; also known by these
90 trade or other names: 2,5-dimethoxy-a-methylphenethyla-
91 mine; 2,5-DMA;
- 92 (2) 3,4-methylenedioxy amphetamine;
- 93 (3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-
94 2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-
95 DMA;
- 96 (4) 5-methyloxy-3, 4-methylenedioxy amphetamine;
- 97 (5) 4-methoxyamphetamine; also known by these trade
98 or other names: 4-methoxy-a-methylphenethylamine;
99 paramethoxyamphetamine; PMA;
- 100 (6) 3,4,5-trimethoxy amphetamine;
- 101 (7) Bufotenine; known also by these trade and other
102 names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-
103 (2-dimethylamino-ethyl)-5) indolol; N-N-dimethylsero-
104 tonin; 5-hydroxy-N-dimethyltryptamine; mappine;

105 (8) Diethyltryptamine; known also by these trade and
106 other names: N-N-Diethyltryptamine; "DET";

107 (9) Dimethyltryptamine; known also by the name
108 "DMT";

109 (10) 4-methyl-2,5-dimethoxy amphetamine; known
110 also by these trade and other names: 4-methyl-2,5-dime-
111 thoxy-a-methylphenethylamine; "DOM"; "STP";

112 (11) Iboqaine; known also by these trade and other
113 names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-
114 methoxy-6, 9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b)
115 indole; tabernanthe iboga;

116 (12) Lysergic acid diethylamide;

117 (13) Marihuana;

118 (14) Mescaline;

119 (15) Peyote; meaning all parts of the plant presently
120 classified botanically as *Lophophora Williamsii* Lematre,
121 whether growing or not; the seeds thereof; any extract
122 from any part of such plant; and every compound, manu-
123 facture, salt, derivative, mixture or preparation of such
124 plant, its seeds or extracts;

125 (16) N-ethyl-3-piperidyl benzilate;

126 (17) N-methyl-3-piperidyl benzilate;

127 (18) Psilocybin;

128 (19) Psilocyn;

129 (20) Tetrahydrocannabinols; including synthetic equiv-
130 alents of the substances contained in the plant or in the
131 resinous extractives of *Cannabis* or synthetic substances,
132 derivatives and their isomers with similar chemical struc-
133 ture and pharmacological activity such as the follow-
134 ing:

135 Delta 1

136 Cis or trans tetrahydrocannabinol, and their optical
137 isomers;

- 138 Delta 6
- 139 Cis or trans tetrahydrocannabinol, and their optical
140 isomers;
- 141 Delta 3, 4
- 142 Cis or trans tetrahydrocannabinil tetrahydrocannabinol,
143 and their optical isomers;
- 144 (21) Thiophene analog of phencyclidine; also known
145 by these trade or other names: (A) (1-(2-thienyl) cyclo-
146 hexyl) piperidine; (B) Thienyl analog of phencyclidine;
147 TPCP;
- 148 (e) Unless specifically excepted or unless listed in an-
149 other schedule, any of the following depressants, its salts,
150 isomers and salts of isomers whenever the existence of
151 such salts, isomers and salts of isomers is possible within
152 the specific chemical designation:
- 153 (1) Mecloqualone.

§60A-2-206. Schedule II.

- 1 (a) The controlled substances listed in this section
2 are included in Schedule II.
- 3 (b) Unless specifically excepted or unless listed in
4 another schedule, any of the following substances whether
5 produced directly or indirectly by extraction from sub-
6 stances of vegetable origin, or independently by means of
7 chemical synthesis, or by a combination of extraction and
8 chemical synthesis:
- 9 (1) Opium and opiate, and any salt, compound, de-
10 rivative or preparation of opium or opiate excluding
11 nalorphine, naloxone and naltrexone and their respective
12 salts, but including the following:
- 13 (A) Raw opium;
14 (B) Opium extracts;
15 (C) Opium fluid extracts;
16 (D) Powdered opium;
17 (E) Granulated opium;
18 (F) Tincture of opium;
19 (G) Codeine;

- 20 (H) Ethylmorphine;
- 21 (I) Ethrophine HCL;
- 22 (J) Hydrocodone;
- 23 (K) Hydromorphone;
- 24 (L) Metopon;
- 25 (M) Morphine;
- 26 (N) Oxycodone;
- 27 (O) Oxymorphone;
- 28 (P) Thebaine;

29 (2) Any salt, compound, isomer derivative or prepar-
30 ation thereof which is chemically equivalent or identical
31 with any of the substances referred to in subdivision (1)
32 of this subsection, except that these substances shall not
33 include the isoquinoline alkaloids of opium;

34 (3) Opium poppy and poppy straw;

35 (4) Coca leaves and any salt, compound, derivative or
36 preparation of coca leaves, and any salt, compound, de-
37 rivative or preparation thereof which is chemically
38 equivalent or identical with any of these substances, ex-
39 cept that the substances shall not include decocainized
40 coca leaves or extractions of coca leaves, which extractions
41 do not contain cocaine or ecgonine;

42 (5) Concentrate of poppy straw (the crude extract of
43 poppy straw in either liquid, solid or powder form which
44 contains the phenanthrine alkaloids of the opium poppy).

45 (c) Unless specifically excepted or unless in another
46 schedule, any of the following opiates, including its
47 isomers, esters, ethers, salts and salts of isomers, esters
48 and ethers whenever the existence of such isomers, esters,
49 ethers and salts is possible within the specific chemical
50 designation:

- 51 (1) Alphaprodine;
- 52 (2) Anileridine;
- 53 (3) Bezitramide;
- 54 (4) Dihydrocodeine;
- 55 (5) Diphenoxylate;
- 56 (6) Fentanyl;
- 57 (7) Isomethadone;

- 58 (8) Levomethorphan;
59 (9) Levorphanol;
60 (10) Metazocine;
61 (11) Methadone;
62 (12) Methadone-Intermediate, 4-cyano-2-dimethylam-
63 ino-4, 4-diphenyl butane;
64 (13) Moramide-Intermediate, 2-methyl-3-morpholino-1,
65 1-diphenyl-propane-carboxylic acid;
66 (14) Pethidine; (meperidine);
67 (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
68 phenylpiperidine;
69 (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperi-
70 dine-4-carboxylate;
71 (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpip-
72 eridine-4-carboxylic acid;
73 (18) Phenazocine;
74 (19) Piminodine;
75 (20) Racemethorphan;
76 (21) Racemorphan.

77 (d) Unless specifically excepted or unless listed in
78 another schedule, any material, compound, mixture or
79 preparation which contains any quantity of the following
80 substances having a stimulant effect on the central ner-
81 vous system:

- 82 (1) Methamphetamine, including its salts, isomers and
83 salts of isomers;
84 (2) Amphetamine, its salts, optical isomers and salts
85 of its optical isomers;
86 (3) Phenmetrazine and its salts;
87 (4) Methylphenidate and its salts.

88 (e) Unless specifically excepted or unless listed in
89 another schedule, any material, compound, mixture or
90 preparation which contains any quantity of the following
91 substances having a depressant effect on the central ner-
92 vous system, including its salts, isomers and salts of
93 isomers whenever the existence of such salts, isomers and
94 salts of isomers is possible within the specific chemical
95 designation:

- 96 (1) Methaqualone;
- 97 (2) Amobarbital;
- 98 (3) Secobarbital;
- 99 (4) Pentobarbital;
- 100 (5) Phencyclidine.

§60A-2-208. Schedule III.

1 (a) The controlled substances listed in this section
2 are included in Schedule III.

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the following
6 substances having a stimulant effect on the central ner-
7 vous system:

- 8 (1) Benzphetamine;
- 9 (2) Chlorphentermine;
- 10 (3) Clortermine;
- 11 (4) Mazindol;
- 12 (5) Phendimetrazine.

13 (c) Unless specifically excepted or unless listed in
14 another schedule, any material, compound, mixture or
15 preparation which contains any quantity of the following
16 substances having a depressant effect on the central ner-
17 vous system:

18 (1) Any substance which contains any quantity of a
19 derivative of barbituric acid or any salt of a derivative of
20 barbituric acid;

- 21 (2) Chlorhexadol;
- 22 (3) Glutethimide;
- 23 (4) Lysergic acid;
- 24 (5) Lysergic acid amide;
- 25 (6) Methyprylon;
- 26 (7) Sulfondiethylmethane;
- 27 (8) Sulfonethylmethane;
- 28 (9) Sulfonmethane;
- 29 (10) Any compound, mixture or preparation contain-
- 30 ing:

31 (i) Amobarbital;

- 32 (ii) Secobarbital;
- 33 (iii) Pentobarbital or any salt thereof and one or more
34 other active medicinal ingredients which are not listed in
35 any schedule;
- 36 (11) Any suppository dosage form containing:
- 37 (i) Amobarbital;
- 38 (ii) Secobarbital;
- 39 (iii) Pentobarbital.
- 40 (d) Nalorphine.
- 41 (e) Narcotic drugs. Unless specifically excepted or
42 unless listed in another schedule, any material, compound,
43 mixture or preparation containing limited quantities of
44 any of the following narcotic drugs or any salts thereof:
- 45 (1) Not more than 1.8 grams of codeine per 100 milli-
46 liters and not more than 90 milligrams per dosage unit,
47 with an equal or greater quantity of an isoquinoline alka-
48 loid of opium;
- 49 (2) Not more than 1.8 grams of codeine per 100 milli-
50 liters and not more than 90 milligrams per dosage unit,
51 with one or more active, nonnarcotic ingredients in
52 recognized therapeutic amounts;
- 53 (3) Not more than 300 milligrams of dihydrocodeinone
54 per 100 milliliters and not more than 15 milligrams per
55 dosage unit, with a fourfold or greater quantity of an
56 isoquinoline alkaloid of opium;
- 57 (4) Not more than 300 milligrams of dihydrocodeinone
58 per 100 milliliters and not more than 15 milligrams per
59 dosage unit, with one or more active, nonnarcotic ingre-
60 dients in recognized therapeutic amount;
- 61 (5) Not more than 1.8 grams of dihydrocodeine per 100
62 milliliters and not more than 90 milligrams per dosage
63 unit, with one or more active, nonnarcotic ingredients in
64 recognized therapeutic amount;
- 65 (6) Not more than 300 milligrams of ethylmorphine per
66 100 milliliters and not more than 15 milligrams per dosage

67 unit, with one or more active, nonnarcotic ingredients in
68 recognized therapeutic amounts;

69 (7) Not more than 500 milligrams of opium per 100
70 milliliters or per 100 grams and not more than 25 milli-
71 grams per dosage unit, with one or more active, nonnar-
72 cotic ingredients in recognized therapeutic amounts;

73 (8) Not more than 50 milligrams of morphine per 100
74 milliliters or per 100 grams and not more than 2.5
75 milligrams per dosage unit, with one or more active,
76 nonnarcotic ingredients in recognized therapeutic
77 amounts.

§60A-2-210. Schedule IV.

1 (a) The controlled substances listed in this section are
2 included in Schedule IV.

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any material, compound, mixture or
5 preparation which contains any quantity of the following
6 substances, including its salts, isomers and salts of iso-
7 mers whenever the existence of such salts, isomers and
8 salts of isomers is possible within the specific chemical
9 designation:

- 10 (1) Barbital;
- 11 (2) Chloral betaine;
- 12 (3) Chloral hydrate;
- 13 (4) Ethchlorvynol;
- 14 (5) Ethinamate;
- 15 (6) Methohexital;
- 16 (7) Meprobamate;
- 17 (8) Methylphenobarbital, as methobarbital;
- 18 (9) Paraldehyde;
- 19 (10) Petrichloral;
- 20 (11) Phenobarbital;
- 21 (12) Lorazepam;
- 22 (13) Mebutamate;
- 23 (14) Clorazepate;
- 24 (15) Chlordiazepoxide;
- 25 (16) Clonazepam;
- 26 (17) Diazepam;

- 27 (18) Flurazepam;
28 (19) Oxazepam;
29 (20) Prazepam.

30 (c) Any material, compound, mixture or preparation
31 which contains any quantity of the following substance,
32 including its salts, isomers (whether optical, position or
33 geometric) and salts of such isomers whenever the exist-
34 tence of such salts, isomers and salts of isomers is possible:
35 Fenfluramine.

36 (d) Unless specifically excepted or unless listed in
37 another schedule, any material, compound, mixture or
38 preparation which contains any quantity of the following
39 substances having a stimulant effect on the central ner-
40 vous system, including its salts, isomers (whether optical,
41 position or geometric) and salts of such isomers when-
42 ever the existence of such salts, isomers and salts of iso-
43 mers is possible within the specific chemical designation:

- 44 (1) Diethylpropion;
45 (2) Phentermine;
46 (3) Pemoline (including organometallic complexes and
47 chelates thereof);
48 (4) Dextropropoxyphene (alpha-(+)-4-dimethylamino-
49 1, 2-diphenyl-3-methyl-2-propionoxybutane).

CHAPTER 20

(S. B. 201—By Mr. Hamilton and Mr. Susman)

[Passed March 6, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-n, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of certain counties as to building and housing codes.

Be it enacted by the Legislature of West Virginia:

That section three-n, 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 COMMISSIONS GENERALLY.

§7-1-3n. Authority of certain counties as to building and housing codes.

1 In addition to all other powers and duties now conferred
2 by law upon county commissions, county commissions of
3 counties with a population of forty-five thousand or more,
4 are hereby authorized and empowered, by order duly
5 entered of record, to adopt building and housing codes
6 establishing and regulating minimum building and housing
7 standards for the purpose of improving the health, safety
8 and well-being of its citizens. Such codes may be adopted
9 either for the entire county, or for any portion or portions
10 of such county which may constitute an effective area or
11 areas for such purposes, without the necessity of adopting
12 such codes for any other portion of such county. Not-
13 withstanding any other provision of this section to the
14 contrary, no such code shall apply to or affect any terri-
15 tory within the boundaries of any municipal corporation
16 which has adopted and in effect a housing and building
17 code, unless and until such municipal corporation so
18 provides by ordinance, or to structures on parcels of land
19 used primarily for agricultural purposes.

CHAPTER 21

(H. B. 1629—By Mr. Colombo and Mr. Goodwin)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-x,

relating to the authority of county commissions to establish county information referral services.

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-x, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3x. County information referral service.

1 In addition to all other powers and duties now conferred
2 by law upon county commissions, such commissions are
3 hereby authorized to establish information outlets for the
4 dissemination of information concerning the sources of com-
5 munity and governmental services available to the public
6 and to refer the members of the public to the correct source
7 of assistance needed.

CHAPTER 22

(H. B. 1207—By Mr. Albright and Mr. Mowery)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, 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-a, relating to county property; sale thereof or buildings thereon to be demolished; permitting local option election; petition; election procedure; form of ballot; and effect of such election.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COUNTY PROPERTY.

§7-3-3a. Sale of county or district property—local option election; petition, election procedure; form of ballot; effect of such election.

1 The county commission of any county is authorized to call
2 a local option election for the purpose of determining the will
3 of the voters as to whether specific real property belonging to
4 the county or held by it for the use of any district thereof shall
5 be conveyed or whether the buildings and improvements there-
6 on shall be demolished.

7 A petition for such local option election shall be in the form
8 hereinafter specified and shall be signed by qualified voters
9 residing within said county equal to at least ten percent of
10 the persons qualified to vote within said county at the last
11 general election. For the purpose of this article, the term
12 “qualified voters” shall mean those actually voting at the last
13 general election and not those registered to vote. Said petition
14 may be in any number of counterparts and shall be sufficient if
15 substantially in the following form:

16 **PETITION**
17 **CONVEYANCE OF COUNTY PROPERTY**
18 **AND/OR**
19 **DEMOLITION OF COUNTY BUILDINGS**
20 **OR IMPROVEMENTS**

21 Each of the undersigned certifies that he or she is a person
22 residing in _____ County, West Virginia, and is duly
23 qualified to vote in said county under the laws of the State,
24 and that his or her name, address and the date of signing this
25 petition are correctly set forth below.

26 The undersigned petition said county commission to call and
27 hold a local option election upon the following question: Shall
28 the county commission of _____ County, West Virginia,
29 be authorized to convey (or demolish buildings and improve-
30 ments located on) the following described real property belong-
31 ing to the county or held by it for the use of a district thereof:

32 (here insert property description)

33 NAME ADDRESS DATE

34

35

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

38 Upon the filing of a petition for a local option election in ac-
39 cordance with the provisions of this section, the county com-
40 mission shall enter an order calling a local option election and
41 providing that the same shall be held at the same time and as a
42 part of the next primary or general election to be held in said
43 county. Said county commission shall give notice of such local
44 option election by publication in two newspapers of opposite
45 politics and of general circulation within said county. Said
46 notice shall be given at least once each week for two successive
47 weeks prior to the date of said election. If there is only one
48 newspaper published in said county, publication of said notice
49 therein shall be sufficient.

50 Each person qualified to vote in said county at said primary
51 or general election shall likewise be qualified to vote at the local
52 option election. The election officers appointed and qualified
53 to serve as such at said primary or general election shall con-
54 duct said local option election in connection with and as a part
55 of said primary or general election. The ballots in said local
56 option election shall be counted and returns made by the elec-
57 tion officers and the results certified by the commissioners of
58 election to said county commission which shall canvass the bal-
59 lots, all in accordance with the laws of the State of West Vir-
60 ginia relating to primary and general elections insofar as the
61 same are applicable. The county commission shall, without de-
62 lay, canvass the ballots cast at said local option election and
63 certify the result thereof.

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

66 "Shall the county commission of _____ County
67 be authorized to convey (or demolish buildings and improve-

68 ments located on) the following described real property be-
69 longing to the county? (insert description)

70 YES NO

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

72 If a majority of the voters voting at any such local option
73 election vote “no” on the foregoing question, the county com-
74 mission shall not thereafter be permitted to convey said real
75 property or demolish the buildings and improvements thereon,
76 as the case may be, unless thereafter authorized so to do.

77 Nothing herein shall prohibit the county commission from
78 altering, improving and maintaining such real property or the
79 buildings and improvements thereon in any manner what-
80 soever which does not demolish the building or improvements
81 which were subject to the referendum.

82 The county commission of any county wherein a majority of
83 the voters have refused permission to convey or demolish
84 specific real property or buildings or improvements pursuant to
85 this section may on its own motion initiate an election pur-
86 suant to this section at any primary or general election held in
87 such county after the voters have refused such permission and
88 may restate the description of property or action desired to be
89 taken in such manner as the commission shall determine.

CHAPTER 23

(S. B. 472—By Mr. Moreland)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter seven 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 county development authorities; making certain findings respecting the necessity for the exercise of the right of eminent domain by county development authorities under certain circumstances; and

authorizing county development authorities to exercise the right of eminent domain under certain circumstances and subject to prescribed limitations.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 seven-a, to read as follows:

ARTICLE 12. COUNTY DEVELOPMENT AUTHORITIES.

§7-12-7a. Findings respecting necessity for exercise of right of eminent domain; authorization to exercise right of eminent domain.

1 (a) It is hereby found and determined by the Legisla-
2 ture that in fulfilling their prescribed purposes and exer-
3 cising their powers, including the purpose of promoting,
4 developing and advancing the business prosperity and
5 economic welfare of the county for which created by
6 acquiring lands and other real property to be furnished
7 by lease, sale or other disposition as industrial sites,
8 county development authorities are performing essen-
9 tial public purposes; that the performance of such es-
10 sential public purposes are frequently impeded, unduly
11 delayed, or wholly frustrated by imperfections in the
12 title to essential land and other real properties, by lost
13 heirs or widely scattered owners of undivided interests
14 in essential lands and other real properties and by
15 owners of relatively small but essential parcels of a
16 proposed land development site who refuse to sell their
17 land or other real property to the county; and, that the
18 exercise by county development authorities of the right
19 of eminent domain within the limitations herein provided
20 is therefore necessary and appropriate to achieve the
21 said public purposes of county development authorities.

22 (b) Any county development authority heretofore or
23 hereafter created by a county commission pursuant to the
24 authority of this article is hereby authorized and em-
25 powered to exercise the right of eminent domain if an
26 order of such county commission authorizing exercise of

27 the right of eminent domain as to any proposed acquisition
28 is first made and entered and at least three fourths
29 of the entire tract has either been purchased, optioned, or
30 is under contract to be purchased: *Provided*, That prior
31 to the issuance of the order by the county commission, it
32 shall hold a public hearing on the public necessity of the
33 exercise of eminent domain and shall cause a Class II
34 legal advertisement to be published in accordance with
35 the provisions of section two, article three, chapter fifty-
36 nine, prior to the hearing: *Provided, however*, That a
37 separate hearing must be held and a separate order pro-
38 mulgated for each parcel over which the authority wishes
39 to exercise the power of eminent domain: *Provided fur-*
40 *ther*, That the right of eminent domain shall not be exer-
41 cised to acquire real property which exceeds one fourth of
42 any land development site proposed by the county devel-
43 opment authority, and the aforesaid order of a county
44 commission shall specifically state the anticipated size of
45 the entire site with respect to which the exercise by a
46 county development authority of the right of eminent
47 domain is authorized.

CHAPTER 24

(Com. Sub. for H. B. 934—By Mr. See and Mr. Tompkins)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, seven, eight, nine, ten, twelve and fourteen, article one; section one, article two; section four, article three; sections one, five, seven, eight, nine, ten and twelve, article four; sections two, three, four, five, six, eight, nine, eleven and twelve, article five; section one, article six, all of chapter fifty; and to further amend article one of said chapter by adding thereto a new section, designated section nine-a; to further amend article four

of said chapter by adding thereto a new section, designated section thirteen; to further amend article five of said chapter by adding thereto a new section, designated section fourteen; and to further amend article six of said chapter by adding thereto a new section, designated section three, all relating to the judicial system and magistrate courts generally; the powers, duties and jurisdiction of magistrates; providing for increases in the salaries of certain magistrates; altering the population criteria for determining the number of magistrates; providing for increasing the salaries of certain magistrates; providing for additional duties for any chief magistrate and providing increased salary for circuit clerks performing said duties; providing for the manner of appointment, duties, increased salaries and authority of magistrate court clerks; providing for magistrate court clerks and the clerk of the circuit court to enforce subpoenas and issue same in magistrate court; providing for increases in salaries of magistrate assistants, their duties and qualifications; providing for magistrate court deputy clerks, their salaries, duties, appointment, and number; requiring magistrate court deputy clerks to also take oath of office and post bond; proscribing certain conduct by magistrate court deputy clerks and providing a penalty therefor; proscribing certain conduct where an officer or employee of magistrate court is a party to an action in magistrate court; providing for civil process servers; applying substantive provisions for unlawful entry and detainer to magistrate court and providing for continuing jurisdiction procedurally as to post judgment process and appeal of same; providing for institution of civil action before magistrate court clerks, magistrate assistants, or deputy clerks; the contents of statements filed by commercial creditors in civil actions; providing for assignment of cases in magistrate court; reducing certain time periods in matters involving unlawful entry and detainer; prescribing time within which affidavit of prejudice must be filed; providing for increase in amount of costs retainable in special county fund; the removal of actions to circuit court upon concurrence of parties where amount in controversy is less than three hundred dollars; clarifying effect of failure to file counterclaim; permitting institution of civil action in county other than the county in which the matter is to be heard; expanding authority of magistrate court to continue proceedings; requiring appointment

of guardian ad litem for incarcerated convict; permitting use of depositions at trial; specifying magistrate court officials or employees authorized to issue subpoenas; requiring supreme court of appeals to promulgate rules; permitting judgment of magistrate court in civil cases to be postponed until next judicial day following the conclusion of proceedings; allowing punishment for contempt of magistrate court for willful resistance of court's orders; permitting magistrate court to collect circuit court filing fees in appeal cases; permitting circuit court to dismiss magistrate court appeals after two terms; permitting entry of guilty plea and payment of fine for certain violations in county other than county in which offense committed; reducing period within which a judgment may not be enforced; and allowing attachment in magistrate court.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Courts and Officers.

50. Magistrate Courts.

CHAPTER 7. COUNTY COURTS AND OFFICERS.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-2. Definitions; population.

- 1 (a) For the purpose of this article:

2 (1) "Appointing officer" or "appointing sheriff" shall mean
3 the sheriff of the county in which the appointment of a deputy
4 sheriff shall be made pursuant to this article; and

5 (2) "Deputy sheriffs" or "deputies" shall mean persons
6 appointed by a sheriff as his deputies whose primary duties
7 as such deputies are within the scope of active, general law
8 enforcement and as such are authorized to carry deadly wea-
9 pons, patrol the highways, perform police functions, make
10 arrests or safeguard prisoners. This definition shall not be
11 construed to include any person or persons whose sole duties
12 shall be the service of civil process and subpoenas as provided
13 in section fourteen, article one, chapter fifty of this code,
14 but such exclusion shall not preclude the service of civil process
15 or subpoenas by deputy sheriffs covered by the provisions of
16 this article.

17 (b) For the purpose of this article, population shall be
18 determined by reference to the last preceding census taken
19 under the authority of the United States or of the Legislature
20 of West Virginia.

CHAPTER 50. MAGISTRATE COURTS.

Article

1. Courts and Officers.
2. Jurisdiction and Authority.
3. Costs, Fines and Records.
4. Procedure before Trial.
5. Trials, Hearings and Appeals.
6. Enforcement of Civil Judgments.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

§50-1-3. Salary of magistrates.

§50-1-7. Chief magistrates; administrative responsibility; additional duties.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

§50-1-10. Clerks, deputy clerks, and magistrate assistants to take oath and post bond.

§50-1-12. Conduct of office; penalty.

§50-1-14. Duties of sheriff; service of process; bailiff.

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in

2 population there shall be elected two magistrates. In each
3 county which has thirty thousand or more in population but
4 less than sixty thousand in population there shall be elected
5 three magistrates; except that in the county of McDowell
6 there shall be elected four magistrates. In each county
7 which has sixty thousand or more in population but less
8 than one hundred five thousand in population there shall
9 be elected four magistrates. In each county which has one
10 hundred five thousand or more in population but less than
11 two hundred thousand in population there shall be elected
12 seven magistrates. In each county which has two hundred
13 thousand or more in population there shall be elected ten
14 magistrates. For the purpose of this article, the population of
15 each county shall be considered to be the population as
16 determined by the last preceding census taken under the
17 authority of the United States government. No change in
18 the number of magistrates caused by the publication of more
19 recent such census figures shall be effective until the next
20 regular election for such office occurring after the year of
21 such publication.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the state.
2 Magistrates who serve less than ten thousand in population
3 shall be paid annual salaries of ten thousand dollars. Magis-
4 trates who serve ten thousand or more in population but less
5 than fifteen thousand in population shall be paid annual
6 salaries of fourteen thousand dollars. Magistrates who serve
7 fifteen thousand or more in population shall be paid annual
8 salaries of eighteen thousand dollars. For the purpose of
9 determining the population served by each magistrate, the
10 number of magistrates authorized for each county shall be
11 divided into the population of each county. Magistrates shall
12 be paid once a month.

§50-1-7. Chief magistrates; administrative responsibility; additional duties.

1 The judge of the circuit court, or the chief judge thereof if
2 there is more than one judge of the circuit court, may
3 appoint one of the magistrates, to serve at the will and pleasure

4 of such circuit court judge, as the chief magistrate of the
5 county. The chief magistrate, if there is one, shall be respon-
6 sible for all of the administrative functions required of the
7 magistrate court in each county by this code and as required
8 by rules and regulations of the supreme court of appeals. These
9 functions shall include, but not be limited to, supervising the
10 circuit clerk or magistrate court clerk in the establishment
11 and maintenance of a centralized docketing system, submitting
12 all reports required by law and promptly notifying such
13 circuit court judge that additional magistrates are required
14 to handle the cases then pending in the magistrate court of
15 said county. Chief magistrates shall have the additional duties
16 of acting as liaison between the magistrate court and the
17 judge of the circuit court, or the chief judge thereof if there
18 is more than one judge of the circuit court, and such other
19 additional duties as may be assigned by such judge.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

1 In each county having three or more magistrates the judge
2 of the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall appoint a magistrate
4 court clerk. In all other counties such judge may appoint
5 a magistrate court clerk or may by rule require the duties
6 of the magistrate court clerk to be performed by the clerk
7 of the circuit court, in which event said circuit court clerk shall
8 be entitled to additional compensation in the amount of two
9 thousand five hundred dollars per year. In any county a magis-
10 trate court clerk may be appointed prior to the first day of
11 January, one thousand nine hundred seventy-seven. The magis-
12 trate court clerk shall serve at the will and pleasure of such
13 circuit judge.

14 Magistrate court clerks shall be paid a monthly salary by the
15 state. Magistrate court clerks serving magistrates who serve five
16 thousand or less in population shall be paid up to five hundred
17 dollars per month. Magistrate court clerks serving magistrates
18 who serve more than five thousand in population but less than
19 ten thousand in population shall be paid up to seven hundred
20 dollars per month. Magistrate court clerks serving magistrates
21 who serve more than ten thousand in population but less than
22 fifteen thousand in population shall be paid up to nine hundred

23 dollars per month. Magistrate court clerks serving magistrates
24 who serve fifteen thousand or more in population shall be paid
25 up to one thousand one hundred dollars per month. For the
26 purpose of determining the population served by each magis-
27 trate, the number of magistrates authorized for each county
28 shall be divided into the population of each county. The salary
29 of the magistrate court clerk shall be established by the judge of
30 the circuit court, or the chief judge thereof if there is more than
31 one judge of the circuit court, within the limits set forth in this
32 section.

33 In addition to such other duties as may be imposed by the
34 provisions of this chapter or by the rules of the supreme court
35 of appeals or the judge of the circuit court, or the chief judge
36 thereof if there is more than one judge of the circuit court, it
37 shall be the duty of the magistrate court clerk to establish and
38 maintain appropriate dockets and records in a centralized
39 system for magistrate court, to assist in the preparation of
40 such reports as may be required of the court and to carry out
41 on behalf of the magistrates, or chief magistrate, if a chief
42 magistrate is appointed, the administrative duties of the court.

43 The magistrate court clerk or, if there is no magistrate court
44 clerk in the county, the clerk of the circuit court shall have
45 the authority to issue all manner of civil process and to
46 require the enforcement of subpoenas and subpoenas duces
47 tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 In each county there shall be one magistrate assistant for
2 each magistrate serving magistrate court. Each magistrate
3 assistant shall be appointed by the magistrate under whose
4 authority and supervision and at whose will and pleasure he
5 shall serve. Such assistant shall not be a member of the im-
6 mediate family of any magistrate, shall not have been con-
7 victed of a felony or any misdemeanor involving moral
8 turpitude and shall reside in the county where appointed.
9 For the purpose of this section, immediate family shall mean
10 the relationships of mother, father, sister, brother, child or
11 spouse.

12 A magistrate assistant shall have such duties, clerical or
13 otherwise, as may be assigned by the magistrate and as may

14 be prescribed by the rules of the supreme court of appeals
15 or the judge of the circuit court, or the chief judge thereof if
16 there is more than one judge of the circuit court. In addition
17 to such duties, magistrate assistants shall perform and be
18 accountable to the magistrate court clerk with respect to the
19 following duties:

- 20 (1) The preparation of summons in civil actions;
- 21 (2) The assignment of civil actions to the various magis-
22 trates;
- 23 (3) The collection of all costs, fees, fines, forfeitures and
24 penalties which may be payable to the court;
- 25 (4) The submission of such moneys, along with an account-
26 ing thereof, to appropriate authorities as provided by law;
- 27 (5) The daily disposition of closed files which are to be
28 located in the magistrate clerk's office;
- 29 (6) All duties related to the gathering of information and
30 documents necessary for the preparation of administrative
31 reports and documents required by the rules of the supreme
32 court of appeals or the judge of the circuit court, or the
33 chief judge thereof if there is more than one judge of the
34 circuit court;
- 35 (7) All duties relating to the notification, certification and
36 payment of jurors serving pursuant to the terms of this
37 chapter;
- 38 (8) All other duties or responsibilities whereby the magis-
39 trate assistant shall be accountable to the magistrate court
40 clerk as the magistrate shall determine.

41 Magistrate assistants shall be paid a monthly salary by the
42 state. Magistrate assistants serving magistrates who serve
43 five thousand or less in population shall be paid up to four
44 hundred dollars per month. Magistrate assistants serving
45 magistrates who serve more than five thousand in population
46 but less than ten thousand in population shall be paid up to
47 five hundred fifty dollars per month. Magistrate assistants
48 serving magistrates who serve more than ten thousand in
49 population but less than fifteen thousand in population shall

50 be paid up to six hundred fifty dollars per month. Magistrate
51 assistants serving magistrates who serve fifteen thousand or
52 more in population shall be paid up to seven hundred fifty
53 dollars per month. For the purpose of determining the popu-
54 lation served by each magistrate, the number of magistrates
55 authorized for each county shall be divided into the popula-
56 tion of each county. The salary of the magistrate assistant
57 shall be established by the magistrate within the limits set
58 forth in this section.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by work load and upon the recom-
2 mendation of the judge of the circuit court, or the chief judge
3 thereof if there is more than one judge of the circuit court,
4 the supreme court of appeals may by rule provide for the
5 appointment of magistrate court deputy clerks, not to exceed
6 forty-five in number. Such magistrate court deputy clerks shall
7 be appointed by the judge of the circuit court, or the chief
8 judge thereof if there is more than one judge of the circuit
9 court, with such appointee to serve at his will and pleasure
10 under the immediate supervision of the magistrate court clerk.
11 Such magistrate court deputy clerk shall have such duties,
12 clerical or otherwise, as may be assigned by the magistrate
13 court clerk and as may be prescribed by the rules of the
14 supreme court of appeals or the judge of the circuit court, or
15 the chief judge thereof if there is more than one judge of the
16 circuit court. Such magistrate court deputy clerks shall also
17 have authority to exercise the power and perform the duties
18 of the magistrate court clerk as may be delegated or assigned
19 by such magistrate court clerk.

20 Such magistrate court deputy clerk shall not be a member of
21 the immediate family of any magistrate, magistrate court
22 clerk, magistrate assistant or circuit court judge within the
23 same county, shall not have been convicted of a felony or any
24 misdemeanor involving moral turpitude and shall reside in the
25 county where appointed. For the purpose of this section, im-
26 mediate family shall mean the relationships of mother, father,
27 sister, brother, child or spouse.

28 Magistrate court deputy clerks shall be paid a monthly

29 salary by the state. Such salary shall be paid on the same
30 basis and in the same applicable amounts as for magistrate
31 assistants in each county as provided in section nine of this
32 article.

§50-1-10. Clerks, deputy clerks and magistrate assistants to take oath and post bond.

1 Each magistrate court clerk, magistrate court deputy clerk,
2 and magistrate assistant, shall take an oath of office and
3 shall post a bond in the penalty of twenty-five thousand dollars
4 with sufficient surety approved by the administrative director
5 of the supreme court of appeals or the judge of the circuit
6 court, or the chief judge thereof if there is more than one
7 judge of the circuit court, which bond shall be conditioned
8 upon the faithful performance of the duties of the office. The
9 state shall pay the cost of such bond and the administrative
10 director of the supreme court of appeals may obtain, in lieu
11 of individual bonds, a bond including more than one magis-
12 trate court clerk, magistrate court deputy clerk or magistrate
13 assistant.

§50-1-12. Conduct of office; penalty.

1 Magistrates shall be subject to and shall abide by the
2 code of judicial ethics as adopted and amended by the
3 supreme court of appeals. In addition to such conduct as
4 may be regulated by the rules of the supreme court of appeals,
5 no magistrate, magistrate court clerk or magistrate court
6 deputy clerk or magistrate assistant shall:

7 (a) Acquire or hold any interest in any matter which is
8 before the magistrate court;

9 (b) Purchase, either directly or indirectly, any property
10 being sold upon execution issued by the magistrate court;

11 (c) Act as agent or attorney for any party in any pro-
12 ceeding in any magistrate court in the state; or

13 (d) Engage in, or assist in, any remunerative endeavor,
14 except the duties of his office, while on the premises of the
15 magistrate court office.

16 Any person who violates the provisions of this section shall

17 be guilty of official misconduct and shall be guilty of a misde-
18 meanor, and, upon conviction thereof, shall be fined not more
19 than five hundred dollars.

20 Nothing contained in this section shall preclude a magistrate,
21 magistrate court clerk, magistrate court deputy clerk, or
22 magistrate assistant from being a party to an action in the
23 magistrate court: *Provided*, That any action in which the
24 magistrate court clerk is a party shall not be assigned to the
25 chief magistrate nor shall any action in which a magistrate
26 court deputy clerk or magistrate assistant is a party be assigned
27 or heard by the magistrate for whom such magistrate assistant
28 is employed or to whose court such deputy clerk is assigned.

§50-1-14. Duties of sheriff; service of process; bailiff.

1 (a) It shall be the duty of each sheriff to execute all civil
2 and criminal process from any magistrate court which may be
3 directed to such sheriff. Process shall be served in the same
4 manner as provided by law for process from circuit courts.

5 Notwithstanding any provision contained therein to the con-
6 trary, the provisions of section thirty-one, article three, chapter
7 fifty-six of this code relating to service of process on non-
8 resident operators of motor vehicles shall apply to actions in
9 magistrate courts.

10 Subject to the supervision of the chief justice of the supreme
11 court of appeals or of the judge of the circuit court, or the
12 chief judge thereof if there is more than one judge of the
13 circuit court, it shall be the duty of the sheriff, or his designated
14 deputy, to serve as bailiff of a magistrate court upon the
15 request of the magistrate. Such service shall also be subject
16 to such administrative rules as may be promulgated by the
17 supreme court of appeals. A writ of mandamus shall lie
18 on behalf of a magistrate to enforce the provisions of this
19 section.

20 (b) The sheriff of any county may employ, by and with the
21 consent of the county commission, one or more persons whose
22 sole duties shall be the service of civil process and the service
23 of subpoenas and subpoenas duces tecum. Any such person
24 shall not be considered a deputy or deputy sheriff within the
25 meaning of subdivision (2), subsection (a), section two,
26 article fourteen, chapter seven of this code, nor shall any such

27 person be authorized to carry deadly weapons in the per-
28 formance of his duties.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the peace,
3 magistrate courts shall have jurisdiction of all civil actions
4 wherein the value or amount in controversy or the value of
5 property sought, exclusive of interest and cost, is not more than
6 one thousand five hundred dollars. Magistrate courts shall have
7 jurisdiction of matters involving unlawful entry or detainer of
8 real estate so long as the title to such real estate is not in dis-
9 pute. Except as the same may be in conflict with the provisions
10 of this chapter, the provisions of article three, chapter fifty-
11 five of this code, regarding unlawful entry and detainer, shall
12 apply to such actions in magistrate court. Magistrate courts
13 shall have jurisdiction of actions on bonds given pursuant to
14 the provisions of this chapter. Magistrate courts shall have
15 continuing jurisdiction to entertain motions in regard to post-
16 judgment process issued from magistrate court and decisions
17 thereon may be appealed in the same manner as judgments.

18 Magistrate courts shall not have jurisdiction of actions in
19 equity, of matters in eminent domain, of matters in which
20 the title to real estate is in issue, of proceedings seeking satis-
21 faction of liens through the sale of real estate, of actions for
22 false imprisonment, of actions for malicious prosecution or
23 of actions for slander or libel or of any of the extraordinary
24 remedies set forth in chapter fifty-three of this code.

25 Magistrates, magistrate court clerks, magistrate court deputy
26 clerks, and magistrate assistants shall have the authority to
27 administer any oath or affirmation, to take any affidavit or
28 deposition, unless otherwise expressly provided by law, and
29 to take, under such regulations as are prescribed by law, the
30 acknowledgement of deeds and other writings.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

1 All costs collected in magistrate courts in a civil or

2 criminal proceeding shall be submitted on or before the
3 tenth day of the month following the month of their collec-
4 tion to the magistrate court clerk or, if there is no magistrate
5 court clerk, to the clerk of the circuit court along with such
6 information as may be required by the rules of the supreme
7 court and by the rules of the chief inspector of public offices.
8 Such clerk shall pay such costs into the special county fund
9 hereafter created during each fiscal year until there shall have
10 been paid a sum equal to twelve thousand five hundred dollars
11 multiplied by the number of magistrates authorized for such
12 county. All costs collected in excess of such sum during a fiscal
13 year shall be paid to the state. Notwithstanding the pro-
14 visions of section two, article nineteen, chapter fifty of this
15 code to the contrary, all costs and fees collected by justices
16 of the peace on or after the first day of July, one thousand
17 nine hundred seventy-six, shall be paid into said special
18 county fund hereafter created.

19 There is hereby created in each county a special county
20 fund designated as the magistrate court fund. No moneys
21 shall be appropriated from the fund except for the purposes
22 provided for in this section. Any money remaining in the
23 magistrate court fund on the thirtieth day of June, one
24 thousand nine hundred seventy-nine, and on the thirtieth day
25 of June of each year thereafter, shall be paid to the state.

26 A county may appropriate and spend from such fund such
27 sums as shall be necessary to defray the expenses of providing
28 bailiff and service of process services by the sheriff, to defray
29 the cost of acquiring or renting magistrate court offices and
30 providing utilities and telephones therefor and to defray the
31 expenses of such other services which by the terms of this
32 chapter are to be provided to magistrate court by the county.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-1. Commencement of civil actions.

§50-4-5. Return date in civil action; setting of trial date; failure to appear;
notify.

§50-4-7. Removal to another magistrate.

§50-4-8. Removal to circuit court.

§50-4-9. Counterclaim.

§50-4-10. Judgment before trial.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

§50-4-13. Inter-county institution of civil actions.

§50-4-1. Commencement of civil actions.

1 There shall be one form of civil action in magistrate court.
2 Civil actions shall be commenced by the payment of the fees
3 required by article three of this chapter and by providing any
4 magistrate, magistrate court clerk, magistrate court deputy
5 clerk, or magistrate assistant with a concise statement, either
6 oral or written, of the nature of the cause of action. Such state-
7 ment must be sufficient to notify the defendant of the subject
8 matter of the action. Where such statement is filed by a
9 commercial creditor, the statement shall include, but not be
10 limited to, a setting forth of the amount of the original obliga-
11 tion, the portion thereof which constitutes principal, the por-
12 tion thereof which represents interest, the date and amount
13 of payments thereon, the amount, if any, credited as a rebate
14 for prepayment, the amount, if any, credited for the sale of
15 repossessed collateral, and the amount alleged to be due.
16 The magistrate court clerk, the magistrate court deputy clerk,
17 or magistrate assistant shall immediately prepare a summons in
18 such form and containing such information as may be required
19 by the rules of the supreme court of appeals. The summons
20 shall be dated the same day the request therefor is received and
21 the appropriate fees received, and the action shall be
22 deemed commenced as of that date. The magistrate assistant
23 shall thereupon forward the matter to the magistrate court
24 clerk together with any service of process fees which may
25 have been collected.

26 Upon receipt of the matter by the magistrate court clerk,
27 such clerk shall docket the same in a central docket. Such
28 clerk shall thereupon assign the action for trial in the manner
29 as shall be prescribed by the judge of the circuit court, or
30 the chief judge thereof if there is more than one judge of the
31 circuit court, to promote and secure the convenient and ex-
32 peditious transaction of the business of the court. After the
33 matter is assigned, the magistrate court clerk shall make note
34 of the assignment on the summons, sign the summons and
35 forward it, together with any service of process fees which
36 may have been collected, to the sheriff for service of process.

§50-4-5. Return date in civil action; setting of trial date; failure to appear or notify.

1 Except in matters involving unlawful entry and detainer,
2 each summons in a civil action shall notify the defendant that
3 he must appear within twenty days after service of the sum-
4 mons upon him or that he must otherwise notify the magis-
5 trate court by that time that he wishes to contest the matter.
6 In matters involving unlawful entry and detainer such ap-
7 pearance or notification shall be required within five days
8 after service of the summons.

9 If the magistrate court is notified by the defendant that he
10 wishes to contest the matter a trial date shall be set and all
11 parties notified thereof. Such trial date shall be at least
12 five days from notification thereof unless all parties consent
13 otherwise thereto.

14 If no appearance or other notification is made within twenty
15 days after the service of the summons on the defendant, or,
16 in matters involving unlawful entry and detainer within five
17 days after service of summons, judgment by default may be
18 entered in accordance with the provisions of section ten of this
19 article.

§50-4-7. Removal to another magistrate.

1 Any party to a civil or criminal proceeding before a magis-
2 trate in any county wherein there is more than one magistrate
3 may file an affidavit that the magistrate before whom the
4 matter is pending has a personal bias or prejudice either against
5 him or in favor of any opposite party or that such magistrate
6 has counseled with any opposite party with respect to the merits
7 of the proceeding. The affidavit shall state the facts and rea-
8 sons for belief in the truth thereof. Such affidavit must be filed
9 at least two days before the trial or hearing date unless the
10 grounds for such affidavit are not discovered until after
11 such time. The supreme court of appeals shall provide a
12 form affidavit which shall be made available to all parties
13 and which shall comply with the requirements of this section.

14 Upon the timely filing of such affidavit, the magistrate
15 shall transfer all matters relating to the case to the magistrate

16 court clerk, who shall thereupon assign and transfer the matter
17 to be heard by some other magistrate within the county
18 upon an assignment basis to be established by the judge of the
19 circuit court, or to transfer all matters relating to the case
20 to the magistrate court clerk, who shall thereupon assign and
21 transfer the matter to be heard by some other magistrate
22 within the county upon a rotation basis to be established by
23 the judge of the circuit court, or the chief judge thereof
24 if there is more than one judge of the circuit court. Such re-
25 moval and assignment shall be permitted, however, only if
26 there is some other magistrate in the county before whom
27 the matter had not been previously pending. No party shall be
28 entitled to cause such a removal more than once.

29 The magistrate to whom the matter is assigned shall set
30 a new return date not more than five days from his receipt
31 of the matter, shall notify all parties thereof, and shall
32 proceed with the matter as if it had been originally assigned
33 to him.

§50-4-8. Removal to circuit court.

1 At any time before trial in a civil action involving less than
2 three hundred dollars the action may be removed to circuit
3 court upon the concurrence of all parties and upon the pay-
4 ment of the circuit court filing fee. At any time before trial
5 in a civil action involving three hundred dollars or more, any
6 party may, upon payment of the circuit court filing fee, cause
7 such action to be removed to the circuit court. All appropriate
8 documents shall then be forwarded along with such fee to the
9 clerk of the circuit court. The matter shall then be heard
10 by the circuit court.

§50-4-9. Counterclaim.

1 A defendant in a civil action may at any time within twenty
2 days after the service of process on him commence a separate
3 action as a counterclaim and if such counterclaim arises from
4 the same transaction or occurrence that is the subject matter
5 of the initial claim they shall be tried together. The require-
6 ments of law relating to the payment of fees and service of
7 process shall apply to counterclaims. The failure to institute
8 a counterclaim permitted by this section shall not preclude the

9 institution of an action on such claim at a later date. The
10 adjudication of the original claim shall not constitute res
11 judicata as to any such permitted counterclaim nor shall it
12 act as an estoppel as to such permitted counterclaim.

§50-4-10. Judgment before trial.

1 If a defendant in a civil action fails to appear or otherwise
2 notify the magistrate court within twenty days after the
3 service of the summons upon him, or within five days in
4 matters involving unlawful entry and detainer, that he wishes
5 to contest the action, the magistrate may enter judgment as
6 justice may require as follows:

7 (a) The magistrate shall enter judgment by default only
8 upon affidavit or sworn testimony reflecting the nature of
9 the claim, whether or not it is for a sum certain or for a
10 sum which can by computation be made certain, the de-
11 fendant's failure to appear or otherwise notify the court
12 within twenty days after service of the summons upon him
13 that he wishes to contest the action and supporting the
14 relief sought. In the event the plaintiff's claim is not
15 for a sum certain or for a sum which can by computation be
16 made certain, the court shall require such further proof by
17 affidavit or sworn testimony as is necessary to determine the
18 priority of the relief sought.

19 (b) No judgment by default shall be rendered against a
20 person who is an infant, incompetent person or incarcerated
21 convict unless such person is represented in the action by
22 a guardian ad litem, guardian, committee, curator or other
23 like fiduciary.

24 Upon motion made by the defendant within twenty days
25 after the entry of such judgment, the magistrate may, for
26 good cause shown, set aside the judgment and set the matter
27 for trial.

28 If a defendant offers to confess judgment at any time,
29 the magistrate shall take the same in writing and enter
30 judgment for the amount confessed plus costs. In the event
31 the amount claimed by the plaintiff exceeds the amount con-
32 fessed by the defendant the plaintiff may request that the

33 matter be set for trial. If the plaintiff's recovery therein does
34 not exceed the amount confessed, costs shall be assessed
35 against the plaintiff.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

1 A magistrate may render judgment against the plaintiff
2 dismissing his action with prejudice to a new action and
3 awarding costs to the defendant when (a) the plaintiff fails
4 to appear and prosecute his action at the proper time for
5 appearance; (b) the plaintiff fails or refuses to testify when
6 properly required to do so; or (c) the plaintiff fails to give
7 security for costs when properly required to do so. In cases
8 (a) and (b) if the plaintiff shows cause why his action should
9 not have been dismissed, the magistrate may set aside such
10 judgment and continue the matter before him or may dismiss
11 the action without prejudice.

12 A magistrate shall dismiss a claim without prejudice if
13 the summons is defective or erroneous and cannot properly be
14 amended.

15 A magistrate shall dismiss a claim without prejudice if the
16 plaintiff requests such dismissal before trial.

17 The dismissal of a claim shall not affect the right of any
18 party to proceed to trial upon a counterclaim.

§50-4-13. Intercounty institution of civil actions.

1 A civil action may be instituted before a magistrate court
2 clerk, magistrate court deputy clerk, or magistrate assistant in
3 any county when the matter should be heard in another
4 county. The clerk, deputy clerk, or magistrate assistant before
5 whom such matter is instituted shall, in such event, forward all
6 fees collected together with an appropriate statement of the
7 matter to the magistrate court of the appropriate county. The
8 clerk, deputy clerk, or magistrate assistant receiving such
9 information and fees shall proceed with the matter as if it
10 were actually instituted before him.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-2. Continuances.

§50-5-3. Appointment of guardian ad litem.

§50-5-4. Subpoenas.

§50-5-5. Privileged communications; persons incompetent to testify.

§50-5-6. Evidentiary depositions.

§50-5-8. Trial by jury.

§50-5-9. Entry of judgment.

§50-5-11. Contempt.

§50-5-12. Appeals in civil cases.

§50-5-14. Pleas in certain cases.

§50-5-2. Continuances.

1 A magistrate shall continue the holding of a trial or hearing
2 upon the motion of any party for a period of time not less
3 than five nor more than ten days, and such mandatory
4 continuance shall be available to each party once. A magis-
5 trate may continue the holding of a trial or hearing at any
6 time upon his own motion or, if good cause is shown, upon
7 the motion of any party. In criminal proceedings when
8 the defendant is in custody, the state shall not have the
9 right to a continuance but may be granted a continuance for
10 no more than five days if good cause is shown. In criminal
11 proceedings when the defendant is in custody, the magistrate
12 may continue the matter no more than once on his own motion
13 over the objection of the defendant and such continuance
14 over the objection of the defendant shall not be for more
15 than two days.

§50-5-3. Appointment of guardian ad litem.

1 No infant, incompetent person or incarcerated convict shall
2 proceed or be proceeded against in a civil action in magistrate
3 court unless the provisions of this section are complied with.

4 Whenever an infant, incompetent person or incarcerated
5 convict has a duly qualified representative, such as a guardian,
6 curator, committee or other like fiduciary, such representative
7 may sue or defend on behalf of the infant, incompetent person
8 or convict. If a person under any disability does not have a
9 duly qualified representative he may sue by his next friend.
10 The magistrate shall appoint some suitable person who shall
11 not be required to be an attorney-at-law as guardian ad litem
12 for an infant, incompetent person or incarcerated convict not
13 otherwise represented in an action.

§50-5-4. Subpoenas.

1 A magistrate, magistrate court clerk, magistrate court deputy
2 clerk or magistrate assistant shall, upon the request of any
3 party, issue a subpoena compelling the attendance and testi-
4 mony of a witness or a subpoena duces tecum compelling the
5 production of some writing or other object. The court shall
6 require the sheriff to enforce such subpoena or subpoena duces
7 tecum and may punish the willful disregard thereof by finding
8 such person in contempt in accordance with the provisions of
9 section eleven of this article. Witness fees and mileage shall
10 be calculated and paid as in the circuit court.

§50-5-5. Privileged communications; persons incompetent to testify.

1 No person shall be compelled to testify at any proceeding
2 in magistrate court as to any communication privileged by
3 law. No person shall be compelled to testify as to any matter
4 as to which he is incompetent by law to testify.

§50-5-6. Evidentiary depositions.

1 In a civil action the evidentiary deposition of any witness
2 residing out of the county or unable to attend court may be
3 taken for use at the trial by any party upon reasonable notice
4 to all other parties.

§50-5-8. Trial by jury.

1 Any party to a civil action is entitled to a trial by jury
2 when the amount in controversy exceeds twenty dollars
3 or involves possession to real estate. Any defendant in any
4 criminal action shall be entitled to a trial by jury, and any
5 such verdict must be unanimous. A defendant in a criminal
6 proceeding may waive a jury trial if he is advised of his
7 right to a jury trial and such waiver is made in writing. A
8 magistrate court jury shall consist of six persons, to be selected
9 from a panel of ten persons. The selection and summoning
10 of jurors shall be conducted in accordance with rules and
11 regulations to be promulgated by the supreme court of ap-
12 peals no later than the first day of July, one thousand nine
13 hundred seventy-eight. Jurors shall be paid by the state in
14 accordance with such rules.

§50-5-9. Entry of judgment.

1 In every criminal case in which the defendant is in custody,
2 a magistrate shall enter judgment immediately upon the con-
3 clusion of the trial or hearing. In all other proceedings, a
4 magistrate shall enter judgment no later than the next suc-
5 ceeding day after the conclusion of the trial or hearing, ex-
6 cluding Saturdays, Sundays and legal holidays.

§50-5-11. Contempt.

1 A magistrate may punish for contempt of court a person
2 guilty of any of the following acts, and in no other case:

3 (a) Contemptuous or insolent behavior toward such magis-
4 trate while engaged in the trial of a case or in any other
5 judicial proceeding;

6 (b) Any breach of the peace, willful disturbance, or in-
7 decent conduct in the presence of such magistrate while so
8 engaged, or so near as to obstruct or interrupt the proceedings;

9 (c) Violence or threats of violence to such magistrate,
10 or any officer, juror, witness, or party going to, attending,
11 or returning from, any judicial proceeding before the court
12 with respect to anything done or to be done in the course
13 of such proceeding;

14 (d) Flagrant misbehavior of any officer of the county acting
15 in his official capacity with respect to any action or judicial
16 proceeding had or pending before the court, or any process,
17 judgment, order or notice therein; or

18 (e) Willful resistance by an officer of the court, juror,
19 witness, party or other person to any lawful process or order
20 of the court.

21 A magistrate may, if necessary, issue a warrant of arrest
22 for such person, who shall be given an opportunity to be
23 heard. In the event such person is adjudged guilty of
24 contempt, the person may be fined not more than fifty dollars
25 for the first offense. For a second offense pertaining to the
26 same matter the person may be fined not more than one
27 hundred dollars. For the third or any subsequent offense
28 pertaining to the same matter the person may be fined not

29 more than one hundred dollars, or imprisoned in the county
30 jail not more than ten days, or both fined and imprisoned.

31 An appeal to the circuit court of such conviction shall lie
32 as in criminal cases.

§50-5-12. Appeals in civil cases.

1 Any person may appeal the judgment of a magistrate court
2 to the circuit court as a matter of right by requesting such
3 appeal not later than twenty days after such judgment is
4 rendered or not later than twenty days after a decision is
5 rendered upon a motion to set aside such judgment. Such
6 person shall be required to post a bond with good security
7 in a reasonable amount not less than the reasonable court
8 costs of the appeal nor more than the sum of the judgment
9 and the reasonable court costs of the appeal, upon the con-
10 dition that such person will satisfy the judgment and any court
11 costs which may be rendered against him on any such appeal.
12 The circuit court filing fee shall be collected by the magistrate
13 court clerk or deputy clerk at the time the appeal is re-
14 quested, which said fee shall be forwarded to the clerk of the
15 circuit court along with other appropriate documents regarding
16 the appeal. No bond shall be required of any governmental
17 agency or authority or of a person who has filed an affidavit
18 pursuant to section one, article two, chapter fifty-nine of this
19 code. If no appeal is perfected within such twenty-day period,
20 the circuit court of the county may, not later than ninety
21 days after the date of judgment, grant an appeal upon a
22 showing of good cause why such appeal was not perfected
23 within such twenty-day period. The filing or granting of an
24 appeal shall automatically stay further proceedings to enforce
25 the judgment. Trial in circuit court shall be de novo. If,
26 after the appeal is regularly placed upon the docket of the
27 circuit court, neither party brings the matter on to hearing
28 before the end of the second term thereafter at which it is
29 called for trial, unless good cause for a continuance is shown,
30 the appeal shall be considered as abandoned and shall be
31 dismissed at the cost of the appellant unless sufficient cause
32 is shown for a further continuance and the judgment of the
33 magistrate court shall stand. No appeal which shall have been

34 so dismissed by the circuit court shall be reinstated after the
35 close of the next regular term after such dismissal.

§50-5-14. Pleas in certain cases.

1 Except for violations of section one or two, article five,
2 chapter seventeen-c of this code, and except for violations of
3 any of the provisions of chapter twenty of this code which
4 may subject the person charged therewith to confinement,
5 any person charged with a violation of said chapter seven-
6 teen-c or said chapter twenty may plead guilty or nolo con-
7 tendere thereto by appearing before a magistrate, magistrate
8 court clerk, magistrate court deputy clerk or magistrate
9 assistant in a county other than the county in which he is
10 charged and pay an appropriate fine and costs as advised by
11 such magistrate clerk or deputy clerk. The clerk, deputy clerk
12 or magistrate assistant shall immediately forward the same
13 to the appropriate magistrate court. The magistrate court
14 may either accept or reject the same. In the event the same
15 is rejected the plea shall be considered withdrawn and all
16 moneys paid shall be returned and the matter shall proceed
17 as if no such offer of plea had been made.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

§50-6-3. Attachment.

§50-6-1. Enforcement of judgments.

1 The provisions of articles three, four, five, five-a, five-b
2 and six, chapter thirty-eight of this code, except as the same
3 are in conflict with the provisions of this chapter or are
4 clearly applicable only to courts of record, shall apply to
5 the enforcement of judgments rendered in magistrate court
6 and process therefor shall issue from magistrate court. Process
7 issued in violation of such provisions shall be void. The form
8 of such process shall be in accord with the rules of the supreme
9 court of appeals. No such process shall issue until after ten
10 days after the judgment is rendered, or, if a motion to set
11 aside such judgment is then pending, until after ten days
12 after the determination of such motion.

§50-6-3. Attachment.

- 1 Except as the same may be in conflict with the provisions
- 2 of this chapter, the provisions of article seven, chapter thirty-
- 3 eight of this code, regarding attachment shall apply to actions
- 4 in magistrate court.

CHAPTER 25

(S. B. 199—By Mr. Jones, Mr. Hatfield, Mr. Beall and Mr. Hanlon)

[Passed February 10, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-e, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to circuit courts; dates of commencement of the terms of court for the fifth judicial circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.**§51-2-1e. Fifth circuit.**

- 1 For the county of Calhoun, on the first Tuesday in
- 2 January, May and September.
- 3 For the county of Jackson, on the fourth Tuesday in
- 4 February, June and October.
- 5 For the county of Roane, on the fourth Tuesday in
- 6 January, May and September.

CHAPTER 26

(S. B. 344—By Mr. Oates and Mr. Steptoe)

[Passed February 17, 1978; in effect from passage.. Approved by the Governor.]

AN ACT to amend and reenact section one-v, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court in the twenty-second judicial circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-1v. Twenty-second circuit.

- 1 For the county of Hampshire, on the first Tuesday in
- 2 January, May and September.
- 3 For the county of Hardy, on the first Tuesday in Feb-
- 4 ruary, June and October.
- 5 For the county of Pendleton, on the first Tuesday in
- 6 March, July and November.

CHAPTER 27

(S. B. 275—By Mr. Rogers and Mr. Grubb)

[Passed February 24, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-y, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dates of commencement of terms of court for the twenty-fifth judicial circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-1y. Twenty-fifth circuit.

- 1 For the county of Boone, on the third Monday in
- 2 January, the third Monday in April and the third Monday
- 3 in September.

- 4 For the county of Lincoln, on the third Monday in
- 5 January, April and September.

CHAPTER 28

(S. B. 100—By Mr. Gainer)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the circuit court original jurisdictional amount from fifty dollars to three hundred dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-2. Jurisdiction.

- 1 The circuit court shall have supervision and control
- 2 of all proceedings before magistrates, by mandamus,
- 3 prohibition and certiorari. They shall, except in cases
- 4 confined exclusively by the constitution to some other

5 tribunal, have original and general jurisdiction of all
6 matters at law where the amount in controversy, ex-
7 clusive of interest, exceeds three hundred dollars; of all
8 cases of habeas corpus, mandamus, quo warranto and
9 prohibition; of all cases in equity, including jurisdiction
10 in equity to remove any cloud on the title to real
11 property, or any part thereof, or any estate, right or
12 interest therein, and to determine questions of title
13 with respect thereto, without requiring allegations or
14 proof of actual possession of the same; and of all crimes
15 and misdemeanors. They shall have appellate jurisdic-
16 tion in all cases, civil and criminal, where an appeal,
17 writ of error or supersedeas may be allowed to the judg-
18 ment or proceedings of any inferior tribunal. They shall
19 also have such other jurisdiction, whether supervisory,
20 original, appellate or concurrent, as is or may be pre-
21 scribed by law.

CHAPTER 29

(Com. Sub. for S. B. 198—By Mr. Jones and Mr. Palumbo)

[Passed March 6, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen; to amend and reenact section ten, article three of said chapter; and to further amend said article by adding thereto a new section, designated section thirteen, all relating to courts; allowing a circuit court to be held in two or more counties at the same time; allowing courts of record to adjourn or fail to sit for up to thirty consecutive days; and permitting courts in vacation to perform same acts and conduct proceeding as they could do in term.

Be it enacted by the Legislature of West Virginia:

That article two, chapter fifty-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 fourteen; that section ten, article three of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section thirteen, all to read as follows:

Article

2. **Circuit Courts and Circuit Judges.**
3. **Courts in General.**

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-14. Holding court in two or more counties in circuit at same time.

1 Notwithstanding any provision in this code to the con-
2 trary, terms of circuit court may be held in two or more
3 counties in the same circuit at the same time and a term
4 of court in one county of a circuit need not be adjourned
5 sine die or otherwise terminated as a condition of or
6 prior to the commencement of a term of court in another
7 county of the same circuit.

ARTICLE 3. COURTS IN GENERAL.

§51-3-10. Opening after day fixed.

§51-3-13. Power of judges of circuit courts to act during vacation of court.

§51-3-10. Opening after day fixed.

1 Though court be not held on the first day of a term,
2 it may nevertheless be opened on any subsequent day;
3 provided, in the case of any court of record for any county,
4 the same be done before four o'clock in the afternoon of
5 the third day. If, after a court is opened, it fails to sit
6 on any day, it may nevertheless sit on any subsequent
7 day of the term: *Provided*, That in the case of any court
8 of record for any county, there be not more than thirty
9 consecutive days of such failure.

§51-3-13. Power of judges of circuit courts to act during vacation of court.

1 The limitations upon the powers of circuit court judges
2 to act in or during the vacation of the court as heretofore
3 existed, either at common law or as may exist elsewhere
4 in this code, to the contrary notwithstanding, a judge of
5 a circuit court may do any act or take any proceeding in

6 any action or proceeding, whether civil, criminal or other-
7 wise, which is instituted or pending before the court
8 during the vacation of such court to the same extent as
9 such judge could act during the term of such court.

CHAPTER 30

(H. B. 1695—By Mr. Tompkins)

[Passed March 8, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, designating the governor's committee on crime, delinquency and correction as the state planning agency pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen 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. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.

§15-9-1. Committee designated as state planning agency under federal law.

1 The Legislature hereby designates the governor's committee
2 on crime, delinquency and correction (established by Executive
3 Order No. 7-A-66 and designated a state planning agency by
4 Executive Order No. 14-68) as the state planning agency
5 required for participation by the state of West Virginia in
6 programs provided for by the Omnibus Crime Control and
7 Safe Streets Act of 1968, as amended (42 United States code,
8 sections 3701 through 3796c, inclusive) and the Juvenile
9 Justice and Delinquency Prevention Act of 1974, as amended
10 (42 United States code, section 5601).

CHAPTER 31

(Com. Sub. for H. B. 1155—By Mr. Wooten)

[Passed March 8, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to defining assault and prescribing penalties therefor; and defining battery and prescribing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9. Malicious or unlawful assault; assault; battery; penalties.

1 (a) If any person maliciously shoot, stab, cut or wound
2 any person, or by any means cause him bodily injury with
3 intent to maim, disfigure, disable or kill, he shall, except
4 where it is otherwise provided, be guilty of a felony, and,
5 upon conviction, shall be punished by confinement in the
6 penitentiary not less than two nor more than ten years. If
7 such act be done unlawfully, but not maliciously, with the
8 intent aforesaid, the offender shall be guilty of a felony, and,
9 upon conviction, shall, in the discretion of the court, either
10 be confined in the penitentiary not less than one nor more
11 than five years, or be confined in jail not exceeding twelve
12 months and fined not exceeding five hundred dollars.

13 (b) Assault—If any person unlawfully attempts to com-
14 mit a violent injury to the person of another or unlawfully
15 commits an act which places another in reasonable appre-
16 hension of immediately receiving a violent injury, he shall
17 be guilty of a misdemeanor, and, upon conviction, shall be con-
18 fined in jail for not more than six months, or fined not more

19 than one hundred dollars, or both such fine and imprison-
20 ment.

21 (c) Battery—If any person unlawfully and intentionally
22 makes physical contact of an insulting or provoking nature with
23 the person of another or unlawfully and intentionally causes
24 physical harm to another person, he shall be guilty of a misde-
25 meanor, and, upon conviction, shall be confined in jail for not
26 more than twelve months, or fined not more than five hundred
27 dollars, or both such fine and imprisonment.

CHAPTER 32

(S. B. 72—By Mr. Brotherton, Mr. President, and Mr. Beall)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to making the act of trespass in, on, under or across certain property, structures and conveyances a criminal offense; defining terms; and providing civil and criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3B. TRESPASS.

§61-3B-1. Definitions.

§61-3B-2. Trespass in structure or conveyance.

§61-3B-3. Trespass on property other than structure or conveyance.

§61-3B-1. Definitions.

1 As used in this article:

2 (1) "Structure" means any building of any kind, either

3 temporary or permanent, which has a roof over it, together
4 with the curtilage thereof.

5 (2) "Conveyance" means any motor vehicle, vessel,
6 railroad car, railroad engine, trailer, aircraft or sleeping
7 car, and "to enter a conveyance" includes taking apart any
8 portion of the conveyance.

9 (3) An act is committed "in the course of committing"
10 if it occurs in an attempt to commit the offense or in
11 flight after the attempt or commission.

12 (4) "Posted land" is that land upon which reasonably
13 maintained signs are placed not more than five hundred
14 feet apart along and at each corner of the boundaries of
15 the land, upon which signs there appears prominently in
16 letters of not less than two inches in height the words "no
17 trespassing" and in addition thereto the name of the own-
18 er, lessee or occupant of the land. The signs shall be placed
19 along the boundary line of posted land in a manner and in
20 a position as to be clearly noticeable from outside of the
21 boundary line. It shall not be necessary to give notice by
22 posting on any enclosed land or place not exceeding five
23 acres in area on which there is a dwelling house or prop-
24 erty that by its nature and use is obviously private in or-
25 der to obtain the benefits of this article pertaining to tres-
26 pass on enclosed lands.

27 (5) "Cultivated land" is that land which has been
28 cleared of its natural vegetation and is presently planted
29 with a crop, orchard, grove, pasture or trees or is fallow
30 land as part of a crop rotation.

31 (6) "Fenced land" is that land which has been enclosed
32 by a fence of substantial construction, whether with
33 rails, logs, post and railing, iron, steel, barbed wire, other
34 wire or other material, which stands at least three feet in
35 height. For the purpose of this article, it shall not be
36 necessary to fence any boundary or part of a boundary of
37 any land which is formed by water and is posted with
38 signs pursuant to the provisions of this article.

39 (7) Where lands are posted, cultivated or fenced as

40 described herein, then such lands, for the purpose of this
41 article, shall be considered as enclosed and posted.

42 (8) "Trespass" under this article is the willful unautho-
43 rized entry upon, in or under the property of another, but
44 shall not include the following:

45 (a) Entry by the state, its political subdivisions or by
46 the officers, agencies or instrumentalities thereof as au-
47 thorized and provided by law.

48 (b) The exercise of rights in, under or upon property by
49 virtue of rights-of-way or easements by a public utility or
50 other person owning such right-of-way or easement
51 whether by written or prescriptive right.

52 (c) Permissive entry, whether written or oral, and
53 entry from a public road by the established private ways
54 to reach a residence for the purpose of seeking permission
55 shall not be trespass unless signs are posted prohibiting
56 such entry.

57 (d) Entry performed in the exercise of a property right
58 under ownership of an interest in, under or upon such
59 property.

60 (e) Entry where no physical damage is done to prop-
61 erty in the performance of surveying to ascertain property
62 boundaries, and in the performance of necessary work of
63 construction, maintenance and repair of a common prop-
64 erty line fence, or buildings or appurtenances which are
65 immediately adjacent to the property line and mainte-
66 nance of which necessitates entry upon the adjoining
67 owner's property.

§61-3B-2. Trespass in structure or conveyance.

1 Any person who knowingly enters in, upon or under a
2 structure or conveyance without being authorized, li-
3 censed or invited, or having been authorized, licensed or
4 invited is requested to depart by the owner, tenant or the
5 agent of such owner or tenant, and refuses to do so, shall
6 be guilty of a misdemeanor, and, upon conviction thereof,
7 shall be fined not more than one hundred dollars.

8 If the offender is armed with a firearm or other danger-
9 ous weapon while in the structure or conveyance, with
10 the unlawful and felonious intent to do bodily injury to a
11 human being in said structure or conveyance at the time
12 the offender knowingly trespasses, such offender shall,
13 notwithstanding the provisions of section one, article sev-
14 en, chapter sixty-one of this code, be guilty of a misde-
15 meanor, and, upon conviction thereof, shall be fined not
16 less than one hundred dollars nor more than five hundred
17 dollars, or be confined in the county jail for a period not
18 to exceed twelve months, or both such fine and imprison-
19 ment.

**§61-3B-3. Trespass on property other than structure or con-
veyance.**

1 (a) Any person who knowingly and without being
2 authorized, licensed or invited, enters or remains on any
3 property, other than a structure or conveyance, as to
4 which notice against entering or remaining is either given
5 by actual communication to such person or by posting,
6 fencing or cultivation, shall be guilty of a misdemeanor,
7 and, upon conviction thereof, shall be fined not more than
8 one hundred dollars.

9 (b) If the offender defies an order to leave, personally
10 communicated to him by the owner, tenant or agent of
11 such owner or tenant, or if the offender opens any door,
12 fence or gate, and thereby exposes animals, crops or other
13 property to waste, destruction or freedom, or causes any
14 damage to property by such trespassing on property other
15 than a structure or conveyance, he shall be guilty of a
16 misdemeanor, and, upon conviction thereof, shall be fined
17 not less than one hundred dollars nor more than five
18 hundred dollars or imprisoned in the county jail for a
19 period not to exceed six months, or both such fine and
20 imprisonment.

21 (c) If the offender is armed with a firearm or other
22 dangerous weapon with the unlawful and felonious intent
23 to do bodily injury to a human being during his commis-
24 sion of the offense of trespass on property other than a
25 structure or conveyance, such offender shall, notwith-

26 standing the provisions of section one, article seven, chap-
27 ter sixty-one of this code, be guilty of a misdemeanor, and,
28 upon conviction thereof, shall be confined in the county
29 jail for a term not to exceed six months, or fined not more
30 than one hundred dollars, or both such fine and imprison-
31 ment.

32 (d) Notwithstanding and in addition to any other pen-
33 alties provided by law, any person who performs or causes
34 damage to property in the course of a willful trespass
35 shall be liable to the property owner in the amount of
36 twice the amount of such damage: *Provided*, That the
37 provisions of this article shall not apply in a labor dispute.

CHAPTER 33

(H. B. 757—By Mrs. Rotgin and Mr. Albright)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend article twelve, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to payment by the state of the cost of transporting bodies both to and from the central laboratory or other autopsy center of the office of medical examinations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.

1 Whenever an autopsy is ordered pursuant to section ten
2 of this article and the body of the deceased transported to

3 the central laboratory or other autopsy center of the office
4 of medical examinations, the reasonable cost of the trans-
5 portation, shall be paid by the state out of funds appro-
6 priated to or for the use of the office of medical examinations.
7 Transportation at state expense shall be provided from the
8 place where the body is being kept at the time the autopsy
9 is ordered to the central laboratory or autopsy center; and,
10 upon completion of the autopsy, to the place designated by
11 the person entitled to possession of the body: *Provided*,
12 That if the body is to be returned a greater distance than
13 it was taken for the autopsy, the state shall only be obligated
14 for the cost of return of the body equal to or less than that
15 incurred to take the body for the autopsy. The payment
16 shall be of a reasonable amount set by the office of medical
17 examinations, including, but not limited to, payment of any
18 part of the total cost as the office of medical examinations
19 shall allow.

CHAPTER 34

(S. B. 36—By Mr. Palumbo)

[Passed January 30, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to bringing West Virginia's daylight saving time law into compliance with federal law.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article one, 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 1. THE GOVERNOR.

§5-1-25. Designation of daylight saving time as official time.

1 Daylight saving time shall be the statewide official

2 time, commencing at two o'clock antemeridian on the
3 fourth Sunday of April and terminating at two o'clock
4 antemeridian on the fourth Sunday of October; said time
5 shall apply to all public schools, institutions of higher
6 learning, agencies, departments and political subdivisions
7 of the state.

CHAPTER 35

(Com. Sub. for H. B. 805—By Mrs. Blatnik)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, permitting application for marriage license to be made and the issuance thereof in the county where either party thereto resides and in the case of nonresidents of this state, permitting such application in any county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. MARRIAGE.

§48-1-6. Application for license; requirements for issuance of license.

1 Every license for marriage shall be issued by the clerk of the
2 county commission of the county in which either party usually
3 resides, except that where both parties are nonresidents of the
4 state of West Virginia, the license shall be issued by the clerk of
5 the county commission of the county in which application is
6 made. Such license shall be issued not sooner than three days
7 after the filing with said clerk of a written application
8 therefor. The day upon which such application is filed
9 shall be counted as the first day, but two full days shall

10 elapse after the day of such filing before the license shall
11 be issued. Before any such license is issued each applicant
12 therefor shall file with the clerk a certificate or certificates
13 from any physician duly licensed in the state, stating that
14 each party thereto has been given such examination, includ-
15 ing a standard serological test, as may be necessary for the
16 discovery of syphilis, made not more than thirty days prior
17 to the date on which such license is issued, and stating that
18 in the opinion of the physician the person therein named
19 either is not infected with syphilis or, if so infected, is not
20 in the state of the disease which is or may later become
21 communicable. Such examinations and tests as are required
22 hereunder may be given as provided by section nineteen,
23 article four, chapter sixteen of this code.

24 The application for a marriage license shall contain a
25 statement of the full names of both parties, their respective
26 ages and their places of birth and residence. It shall be
27 signed by both of the parties to the contemplated marriage,
28 under oath before the clerk of the county commission or
29 before a person authorized to administer oaths under the
30 laws of this state. At the time of the execution of such
31 application, the clerk, or the person administering the oath
32 to the applicants, shall require some evidence of the age
33 of each of the applicants. Evidence of the age of each
34 applicant may be in the form of a certified or photostatic
35 copy of a birth certificate, a voter's registration certificate,
36 an operator's or chauffeur's license, an affidavit of both
37 parents or legal guardian of the applicant or other good and
38 sufficient evidence of such age. Where such an affidavit is
39 relied upon as evidence of the age of an applicant, and one
40 parent is dead, the affidavit of the surviving parent or of
41 the guardian of the applicant shall suffice; if both parents
42 are dead, the affidavit of the guardian of the applicant shall
43 suffice. If the parents of the applicant are living separate and
44 apart, the affidavit of the parent having custody of the
45 applicant shall suffice. Such application shall be recorded
46 in the register of marriages provided for in section eleven
47 of this article. The date of the filing of the application
48 shall be noted in said register, which notation, or a certified

49 copy thereof, shall be legal evidence of the facts therein
50 contained.

51 To the extent otherwise provided by section six-c of this
52 article, the provisions of this section shall not apply. No
53 application for license shall be received nor any license
54 issued on any Sunday, or before the hours of eight o'clock a.m.
55 and after five o'clock p.m. on any week day; nor any
56 application be received nor any license issued except in the
57 office of such clerk.

CHAPTER 36

(H. B. 1474—By Mr. Damron and Mr. See)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article nine, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to powers of the circuit court under the reciprocal dependency law; fees to be collected by the clerk.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

§48-9-15. Costs and fees.

1 An initiating court shall not require payment of either
2 a filing fee or other costs from the obligee, but may request
3 the responding court to collect fees and costs from the obligor.
4 A responding court shall not require payment of a filing fee
5 or other costs from the obligee, but it may direct that all
6 fees and costs requested by the initiating court and incurred
7 in this state when acting as a responding state, including

8 fees for filing of pleadings, service of process, seizure of
9 property, stenographic or duplication service or other service
10 supplied to the obligor, be paid in whole or in part by the
11 obligor. When a court in this state is the responding court
12 and has ordered that the obligor make payments to the
13 clerk of such court for transmission to the court in an
14 initiating state, the clerk shall collect from the obligor, in
15 addition to all other fees and costs, a fee equal to one
16 percent of the payment ordered to be paid by the obligor,
17 which fee shall be treated in the manner of all other fees
18 received by the clerk. Costs or fees do not have priority
19 over amounts due to the obligee.

CHAPTER 37

(Com. Sub. for H. B. 1003—By Mr. Ketchum and Mr. Blevins)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to county boards of education; requiring screen testing for vision and hearing impairment; and providing notice to parents or guardians of children found to have a vision or hearing impairment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-17. Vision and hearing testing.

1 All children entering school for the first time in this state
2 shall be given a screening test to determine if they might .

3 have a vision or hearing impairment. County boards of
 4 education shall conduct all such screening tests through the
 5 use of trained personnel. Parents or guardians of children who
 6 are found to have a vision or hearing impairment shall be
 7 notified of the results of such tests and advised that further
 8 diagnosis and treatment of such impairment by qualified pro-
 9 fessional personnel is recommended.

10 The state board of education is hereby authorized to pro-
 11 mulgate further rules and regulations consistent with this
 12 section. The state superintendent is directed to apply for
 13 federal funds, if available, for the implementation of the re-
 14 quirements of this section.

CHAPTER 38

(Com. Sub. for H. B. 1110—By Mr. Blevins)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state teachers retirement system; the election of a retired school employee by retired school employees as an additional member of the state retirement board; and setting the requirements for the receipt of credit for service as a teacher performed outside this state.

Be it enacted by the Legislature of West Virginia:

That sections five 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-5. Members of retirement board; terms of office; vacancies.

§18-7A-17. Statement and computation of teachers' service.

§18-7A-5. Members of retirement board; terms of office; vacancies.

1 The retirement board shall consist of the following ten

2 members: (a) The governor, who shall be *ex officio* chairman;
3 (b) the state superintendent of free schools; (c) the commis-
4 sioner of finance and administration; (d) the state insurance
5 commissioner; (e) the state treasurer; (f) four members of the
6 retirement system; and (g) a retired school employee to be
7 elected by retired school employees receiving benefits from
8 the retirement system. The elected retired school employee
9 shall be a resident of this state who shall have been receiving
10 benefits from the retirement system at least one year prior
11 to his election to the board.

12 All elections shall be held prior to the first day of July.
13 The retired school employee member shall be elected for
14 a two-year term; the first term shall begin on the first day
15 of July, one thousand nine hundred seventy-eight. All elec-
16 tions except those of the retired school employees, shall be
17 for six-year terms; and all elective terms shall begin on the
18 first day of July. The manner and mode of such elections
19 shall be determined by the retirement board.

20 Vacancies occurring in the terms of the elected membership
21 of the retirement board shall be filled within sixty days for
22 unexpired periods by the retirement board. If the retirement
23 board does not fill such vacancy within sixty days, the
24 chairman shall appoint a member of the retirement system
25 to serve for the remainder of the unexpired term.

26 Before exercising any authority or performing any duties
27 as a member of the retirement board, each member shall
28 qualify as such by taking and subscribing to the oath of
29 office prescribed by section five, article four of the constitu-
30 tion, the certificates whereof shall be filed with the secretary
31 of state.

§18-7A-17. Statement and computation of teachers' service.

1 Under such rules and regulations as the retirement board
2 may adopt, each teacher shall file a detailed statement of
3 his length of service as a teacher for which he claims credit.
4 The retirement board shall determine what part of a year
5 is the equivalent of a year of service. In computing such
6 service, however, it shall credit no period of more than a
7 month's duration during which a member was absent without

8 pay, nor shall it credit for more than one year of service
9 performed in any calendar year.

10 For the purpose of this article, the retirement board shall
11 grant prior service credit to new entrants and other members
12 of the retirement system for service in any of the armed
13 forces of the United States in any period of national emer-
14 gency within which a federal selective service act was in effect.
15 For purposes of this section, "armed forces" shall include
16 Women's Army Corps, Women's Appointed Volunteers for
17 Emergency Service, Army Nurse Corps, Spars, Women's Re-
18 serve and other similar units officially parts of the military
19 service of the United States. Such military service shall be
20 deemed equivalent to public school teaching, and the salary
21 equivalent for each year of such service shall be the actual
22 salary of the member as a teacher for his first year of teach-
23 ing after discharge from military service. Prior service credit
24 for military service shall not exceed ten years for any one
25 member, nor shall it exceed twenty-five percent of total
26 service at the time of retirement.

27 For service as a teacher in the employment of the federal
28 government, or a state or territory of the United States, or
29 a governmental subdivision of such state or territory, the
30 retirement board shall grant credit to the member: *Provided*,
31 That the member shall pay to the system double the amount
32 he contributed during the first full year of current employ-
33 ment, times the number of years for which credit is granted,
34 plus interest at a rate to be determined by the retirement
35 board. Such interest shall be deposited in the reserve fund
36 and service credit so granted at the time of retirement shall
37 not exceed the lesser of ten years or fifty percent of the
38 member's total service as a teacher in West Virginia. Any
39 transfer of out-of-state service, as provided in this article,
40 shall not be used to establish eligibility for a retirement allow-
41 ance and the retirement board shall grant credit for such
42 transferred service as additional service only: *Provided, how-*
43 *ever*, That a transfer of out-of-state service shall be prohibited
44 if such service is used to obtain a retirement benefit from
45 another retirement system: *Provided further*, That salaries paid
46 to members for service prior to entrance into the retirement

47 system shall not be used to compute the average final salary of
48 such member under the retirement system.

49 No member shall be deemed absent from service as a
50 teacher while serving as a member of the Legislature of the
51 state of West Virginia during any duly constituted session
52 of that body.

53 No member shall be deemed absent from service as a
54 teacher while serving on leave of absence as an officer with
55 a statewide professional teaching association, or who has
56 served in such capacity, and no retired teacher, who served
57 on such leave of absence while a member, shall be deemed
58 to have been absent from service as a teacher by reason of
59 such service on leave of absence: *Provided*, That the period
60 of service credit granted for such service on leave of absence
61 shall not exceed two years: *Provided, however*, That such
62 member or retired teacher who is serving or has served as
63 an officer of a statewide professional teaching association
64 shall make deposits to the teachers retirement board, for the
65 time of any such absence, in an amount double the amount
66 which he would have contributed in his regular assignment
67 for a like period of time.

68 The teachers retirement board shall grant service credit
69 to any former or present member of the West Virginia
70 public employees retirement system who has been a con-
71 tributing member for more than three years, for service
72 previously credited by the public employees retirement system,
73 and (1) shall require the transfer of the member's contribu-
74 tions to the teachers retirement system or (2) shall require a
75 repayment of the amount withdrawn any time prior to the
76 member's retirement: *Provided*, That there shall be added by
77 the member to the amounts transferred or repaid under this
78 paragraph an amount which shall be sufficient to equal the
79 contributions he would have made had the member been
80 under the teachers retirement system during the period of
81 his membership in the public employees retirement system.
82 Payments for absence as provided in section thirteen of this
83 article, shall be paid in addition to the above amount, if
84 applicable.

85 If a member is not eligible for prior service credit or
86 pension as provided in this article, then his prior service shall
87 not be deemed a part of his total service.

88 A member who withdrew from membership shall be per-
89 mitted to regain his former membership rights as specified
90 in section thirteen of this article only in case he has served
91 two years since his last withdrawal.

92 Subject to the above provisions, the board shall verify
93 as soon as practicable, the statements of service submitted.
94 The retirement board shall issue prior service certificates to
95 all persons eligible therefor under the provisions of this
96 article. Such certificates shall state the length of such prior
97 service credit, but in no case shall the prior service credit
98 exceed forty years.

CHAPTER 39

(Com. Sub. for S. B. 390—By Mr. Nelson)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, four, five and six, article twenty, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education of exceptional children; clarifying the responsibility of the state board of education and state superintendent of schools; prohibiting exclusion of educationally handicapped children from school; and expanding the composition of and duties of the advisory council for education of exceptional children.

Be it enacted by the Legislature of West Virginia:

That sections one, four, five and six, 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.
- §18-20-4. Examination and report by medical or other specialists.
- §18-20-5. Powers and duties of state superintendent.
- §18-20-6. Advisory council for the education of exceptional children.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

1 In accordance with the following provisions, county
2 boards of education throughout the state shall establish
3 and maintain for all exceptional children between five
4 and twenty-three years of age special educational pro-
5 grams, including but not limited to special schools, classes,
6 regular classroom programs, home-teaching or visiting-
7 teacher services for such type or classification as the
8 state board of education shall approve. Provisions shall
9 be made for educating such exceptional children (in-
10 cluding the handicapped and the gifted) who differ from
11 the average or normal in physical, mental or emotional
12 characteristics, or in communicative or intellectual devia-
13 tion characteristics, or in both communicative and in-
14 tellectual deviation characteristics, to the extent that
15 they cannot be educated safely or profitably in the regular
16 classes of the public schools or to the extent that they
17 need special educational provisions within the regular
18 classroom in order to educate them in accordance with
19 their capacities, limitations and needs. In addition,
20 county boards of education may establish and
21 maintain other educational services for exceptional
22 children as the state superintendent of schools may
23 approve.

24 By the school year beginning on the first day of July,
25 one thousand nine hundred seventy-four, county boards
26 of education shall establish and maintain these special
27 educational programs, including but not limited to special
28 schools, classes, regular class programs, home-teaching
29 and visiting-teacher services. The state board of educa-
30 tion shall adopt rules and regulations to advance and
31 accomplish this program and to assure that all excep-

32 tional children in the state, including children in mental
33 health facilities, residential institutions and private
34 schools, will receive an education in accordance with the
35 mandates of state and federal laws.

36 Nothing in this section shall be construed to prevent
37 county boards of education from providing special edu-
38 cational programs, including but not limited to special
39 schools, classes, regular class programs, home-teaching
40 or visiting-teacher services for such exceptional children
41 who are three years of age or older.

**§18-20-4. Examination and report by medical or other special-
ists.**

1 Each child prior to enrolling in a special education
2 program shall be examined by an appropriate medical
3 specialist, psychologist or educational specialist (reading
4 specialist, speech and language clinician, or other spe-
5 cialists as required by the state board of education for
6 specific areas of exceptionality) who shall report to the
7 county superintendent of schools. The specialists' report
8 shall carry recommendation for eligibility and placement
9 in regular school or in the special education facility,
10 indicate the nature and extent of disability, and advise
11 with reference to treatment and prosthesis for alleviating
12 the child's disability.

13 No educationally exceptional child shall be excluded
14 from attending public or other suitable schools.

§18-20-5. Powers and duties of state superintendent.

1 The state superintendent of schools shall have power
2 to organize, promote and administer this program under
3 his present organization and be responsible for:

4 (1) Stimulating and assisting county boards of edu-
5 cation in establishing, organizing and maintaining special
6 schools, classes, regular class programs, home-teaching
7 and visiting-teacher services.

8 (2) Cooperating with all other public and private
9 agencies engaged in relieving, caring for, curing, edu-

10 cating and rehabilitating exceptional children, and in
11 helping coordinate the services of such agencies.

12 (3) Preparing the necessary rules, regulations, formula
13 for distribution of available appropriated funds, report-
14 ing forms and procedures necessary to define minimum
15 standards in providing suitable facilities for education of
16 exceptional children, ensuring the employment, certi-
17 fication and approval of qualified teachers and therapists
18 subject to approval by the state board of education.

19 (4) Receiving from county boards of education their
20 applications, annual reports and claims for reimburse-
21 ment from such moneys as are appropriated by the
22 Legislature, auditing such claims and preparing vouchers
23 to reimburse said counties the amounts reimbursable
24 to them.

25 (5) Assuring that all exceptional children in the state,
26 including children in mental health facilities, residential
27 institutions and private schools, receive an education in
28 accordance with state and federal laws.

29 (6) Performing such other duties and assuming such
30 other responsibilities in connection with this program as
31 may be needed.

32 (7) Nothing herein contained shall be construed to
33 prevent any county board of education from establish-
34 ing and maintaining special schools, classes, regular class
35 programs, home-teaching or visiting-teacher services out
36 of funds available from local revenue.

§18-20-6. Advisory council for the education of exceptional children.

1 There shall be an advisory council for the education of
2 exceptional children which shall advise and consult with
3 the state board of education on matters pertinent thereto.
4 The advisory council shall be composed of twelve mem-
5 bers appointed by the state superintendent of free
6 schools, four of which shall be parents of exceptional
7 children utilizing or eligible for the services of the special
8 educational programs established hereunder. Other

9 members of the advisory council shall include at least
10 one handicapped individual, teacher of exceptional chil-
11 dren, state education official, local education official, and
12 an administrator of programs for exceptional children.
13 No more than two officers and employees of the state
14 may be eligible for appointment to the advisory council.
15 Members shall be appointed for terms of three years
16 except for initial terms which may be for one, two or
17 three years. Each year the terms of office of one third
18 of the advisory council shall expire. The members of
19 the advisory council shall be citizens and residents of
20 this state, who by reason of their training, education or
21 experience are qualified to carry out the functions of
22 the advisory council under this article.

23 The first term of office for the newly appointed mem-
24 bers shall begin the thirtieth day of June, one thousand
25 nine hundred seventy-eight.

26 At its first meeting, to be held the second Wednesday
27 in July, one thousand nine hundred seventy-eight, the
28 advisory council shall elect a chairman from among its
29 members, who shall preside over its meetings until the
30 second Wednesday in July of the next year. Thereafter,
31 the advisory council shall elect a chairman on the second
32 Wednesday in May of each year.

33 All members shall be eligible for reappointment. A
34 member shall, unless sooner removed, continue to serve
35 until his term expires and his successor has been ap-
36 pointed and has qualified. A vacancy caused by the death,
37 resignation or removal of a member prior to the expira-
38 tion of his term shall be filled only for the remainder of
39 such term.

40 For the purpose of carrying out its functions under
41 this article, six members of the advisory council shall
42 constitute a quorum. The advisory council shall meet at
43 least four times each year at least two of which shall be
44 held at a building in the state capitol complex and at a
45 time designated by the chairman. Additional meetings
46 may be held when called by the chairman or when re-
47 quested by six members of the advisory council.

48 The time and place of all meetings and agenda items
49 must be publicly announced and available to the public
50 upon request at least ten days prior to the meeting, and
51 meetings must be open to the public. Official minutes
52 must be kept of all council meetings and shall be made
53 available to the public upon request.

54 Members of the council shall not receive any compen-
55 sation for their services on the council, but shall be re-
56 imbursement any actual expenses incurred by them in carry-
57 ing out their duties from funds appropriated to the de-
58 partment of education.

59 The council shall:

60 (a) Consult with the state board of education concern-
61 ing and comment publicly upon any rules and regula-
62 tions formulated by such board regarding the education of
63 handicapped children;

64 (b) Consult with and advise the state board and super-
65 intendent and the Legislature concerning any problems
66 presented to the council including unmet needs within
67 the state in the education of handicapped children;

68 (c) Hold public meetings at such times and places as the
69 advisory council deems appropriate;

70 (d) Periodically review and comment publicly upon
71 the state plan for special programs and make any rec-
72 ommendations it may have concerning changes it may
73 deem proper. By the first day of July of each year, the
74 advisory council shall submit an annual report of its
75 activities and suggestions to the state board of education
76 and the superintendent, and shall make such report
77 available to the public.

3

CHAPTER 40

(Com. Sub. for H. B. 1221—By Mr. Speaker, Mr. Kopp, and Mr. Albright)

[Passed February 13, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, nine-a and nine-b,
article twenty-six, chapter eighteen of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, relating to the West Virginia board of regents; members; vacancies among and selection of the voting members of the board of regents; requiring the governor to fill vacancies among the appointed members within sixty days of a vacancy; and relating to the advisory council of faculty and the advisory council of the students; prohibiting proxy voting during elections of chairmen of the faculty and student advisory councils to the board of regents; providing a tie-breaking method at such elections; providing for the election of a council member to preside in the chairman's absence; and requiring the councils to meet and elect new chairmen within thirty days of a vacancy in such chairmanships.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18-26-9a. Advisory council of faculty.

§18-26-9b. Advisory council of students.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 The governor shall appoint nine members of the board to be
 2 appointed by him as soon after the effective date of this article
 3 as is practicable, and the original terms of the nine members
 4 appointed by the governgr and of the one member, who is
 5 such by virtue of being the state superintendent of schools,
 6 shall commence on July one, one thousand nine hundred
 7 sixty-nine. The chairman of the advisory council of students,
 8 ex officio, and the chairman of the advisory council of
 9 faculty, ex officio, shall serve the terms for which they were
 10 elected by their respective advisory councils; these members
 11 shall be eligible to succeed themselves. All members of the
 12 board of regents serving as of the effective date of this enact-

13 ment shall continue to serve until the end of their term as
14 provided for above.

15 The governor shall appoint a member to fill any vacancy
16 among the nine members of the board appointed by the
17 governor, by and with the advice and consent of the Senate,
18 which member appointed to fill such vacancy shall serve for
19 the unexpired term of the vacating member. The governor
20 shall fill the vacancy within sixty days of the occurrence of
21 the vacancy.

22 All members of the board appointed by the governor shall
23 be eligible for reappointment. A person who has served as a
24 member during all or any part of the two consecutive terms
25 shall be ineligible to serve as a member for a period of three
26 years immediately following the second of the two consecu-
27 tive terms.

28 Before exercising any authority or performing any duties
29 as a member of the board, each member shall qualify as such
30 by taking and subscribing to the oath of office prescribed by
31 section 5, article IV of the state Constitution, the certificate
32 whereof shall be filed with the secretary of state.

33 No member of the board appointed by the governor may be
34 removed from office by the governor except for official
35 misconduct, incompetence, neglect of duty, or gross im-
36 morality and then only in the manner prescribed by law for the
37 removal by the governor of the state elective officers.

§18-26-9a. Advisory council of faculty.

1 During the month of April, one thousand nine hundred
2 seventy-seven, and annually thereafter, each state college,
3 community college, including Potomac State College of West
4 Virginia University, and university president or other adminis-
5 trative head shall convene a meeting of all faculty members
6 of his institution. At these meetings, the faculty members of
7 each such college and university shall elect one faculty member
8 to serve on the advisory council of faculty, which is hereby
9 created, consisting of one faculty member, so elected, from
10 each such college and university. Terms of the members of
11 such council shall be for one year and shall begin on the
12 first day of May of each year.

13 The advisory council of faculty shall meet at least once
14 each quarter, and shall meet during each month of June, at
15 which meeting the council shall elect a chairman, who shall
16 be by virtue of his office a voting member of the West Vir-
17 ginia board of regents. No member may vote by proxy at
18 such election. In the event of a tie in the last vote taken
19 for such election, a member authorized by the council shall
20 select the chairman by lot from the names of those persons
21 tied. Immediately following the election of a chairman, the
22 council shall elect, in the manner prescribed by this section
23 for the election of a chairman, a member of the council to
24 preside over meetings of the council in the chairman's absence.
25 Should the chairman vacate the position, the council shall
26 meet and elect a new chairman to fill the unexpired term
27 within thirty days following such vacancy.

28 The advisory council of faculty, through its chairman and
29 in any other appropriate manner, shall consult and advise the
30 board of regents in matters of higher education in which the
31 faculty members of this state's colleges and universities may
32 have an interest.

33 Members of the advisory council shall be eligible to succeed
34 themselves. Members of the advisory council shall serve
35 without compensation, but shall be entitled to reimbursement
36 for actual and necessary expenses incurred in the performance
37 of the duties of their office to be paid by the state college
38 or university served.

39 The board of regents shall furnish a secretarial service to
40 the advisory council, and the advisory council shall cause to
41 be prepared minutes of its meetings, which minutes shall be
42 available, upon request, to any faculty member of the state's
43 colleges and universities.

§18-26-9b. Advisory council of students.

1 The student government organization at each state col-
2 lege, community college, including Potomac State College
3 of West Virginia University, and university shall elect
4 a student, who shall be a resident of the state of West
5 Virginia and who may be the elected head, or president,
6 of such organization, to serve on the advisory council

7 of students which is hereby created, consisting of the
8 elected representatives of each such college or university.
9 Terms of the members of such council shall be for one
10 year and shall begin on the first day of May of each
11 year.

12 The advisory council of students shall meet at least once
13 each quarter, and shall meet during each month of June, at
14 which meeting, the council shall elect a chairman, who shall
15 be a resident of the state of West Virginia and who shall be,
16 by virtue of his office, a voting member of the West Virginia
17 board of regents. No member may vote by proxy at such
18 election. In the event of a tie in the last vote taken for
19 such election, a member authorized by the council shall
20 select the chairman by lot from the names of those persons
21 tied. Immediately following the election of a chairman, the
22 council shall elect, in the manner prescribed by this section
23 for the election of a chairman, a member of the council to
24 preside over meetings of the council in the chairman's absence.
25 Should the chairman vacate the position, the council shall
26 meet and elect a new chairman to fill the unexpired term
27 within thirty days following such vacancy.

28 The advisory council of students, through its chairman and
29 in any other appropriate manner, shall consult and advise
30 the board of regents in matters of higher education in which
31 the students of the state's colleges and universities may have
32 an interest.

33 Members of the advisory council shall be eligible to succeed
34 themselves. Members of the advisory council shall serve
35 without compensation, but shall be entitled to reimbursement
36 for actual and necessary expenses incurred in the performance
37 of the duties of their office to be paid by the state college or
38 university served.

39 The board of regents shall furnish a secretarial service to
40 the advisory council, and the advisory council shall cause to
41 be prepared minutes of its meetings, which minutes shall be
42 available, upon request, to any student in this state's colleges
43 and universities.

CHAPTER 41

(Com. Sub. for H. B. 1396—By Mrs. Hartman and Mr. Starcher)

[Passed March 13, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to repeal section two-b, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a of said article, relating to teachers' salaries, wages and other benefits; providing for the rescheduling of canceled instructional days; and establishing a state supplemental salary schedule.

Be it enacted by the Legislature of West Virginia:

That section two-b, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section two-a of said article be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2a. State supplemental salaries.

1 In addition to the amount of state minimum salary received
 2 pursuant to section two of this article, on and after the first
 3 day of July, one thousand nine hundred seventy-eight, each
 4 teacher shall receive as a supplement thereto the specific
 5 additional amount prescribed in this section for such teacher's
 6 years of experience and educational level as hereinafter set
 7 forth. This salary supplement and the increased fixed charges
 8 payments hereby required shall be paid outside the West Vir-
 9 ginia public school support plan provided for in article nine-a,
 10 chapter eighteen of the code: *Provided*, That commencing
 11 with the one thousand nine hundred seventy-eight—one thou-
 12 sand nine hundred seventy-nine school year and, notwith-
 13 standing any other provisions of the law to the contrary,
 14 no county board shall schedule more than four paid non-
 15 instructional days, except holidays, prior to January one of
 16 each year and, when as a consequence of emergency con-
 17 ditions, a county board has canceled scheduled instructional
 18 days, such board shall reschedule the canceled instructional

19 days upon those paid noninstructional days, except holidays,
 20 which are available prior to the second day before the end
 21 of the employment term established by such county board:
 22 *Provided, however,* That the employment term shall in no
 23 case exceed a total of two hundred paid days, and the
 24 instructional term shall be scheduled within said employment
 25 term of two hundred paid days.

26 STATE SUPPLEMENTAL SALARY SCHEDULE

27	Educational Level									
28	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
29	Years	4th	3rd	2nd	AB	AB	MA	MA	MA	Doc-
30	Exp.	Class	Class	Class	AB	+15	MA	+15	+30	torate
31	0	1200	1200	1200	1200	1310	1420	1530	1640	1750
32	1	1200	1200	1200	1252	1362	1472	1582	1692	1802
33	2	1200	1200	1200	1304	1414	1524	1634	1744	1854
34	3	1200	1200	1200	1356	1466	1576	1686	1796	1906
35	4	1200	1200	1200	1408	1518	1628	1738	1848	1958
36	5	1200	1200	1200	1460	1570	1680	1790	1900	2010
37	6	1200	1200	1200	1512	1622	1732	1842	1952	2062
38	7		1200	1200	1564	1674	1784	1894	2004	2114
39	8		1200	1200	1616	1726	1836	1946	2056	2166
40	9			1200	1668	1778	1888	1998	2108	2218
41	10			1200	1720	1830	1940	2050	2160	2270
42	11				1772	1882	1992	2102	2212	2322
43	12				1824	1934	2044	2154	2264	2374
44	13				1876	1986	2096	2206	2316	2426
45	14						2148	2258	2368	2478
46	15						2200	2310	2420	2530
47	16						2252	2362	2472	2582
48	17								2524	2634
49	18								2576	2686
50	19								2628	2738

CHAPTER 42

(Com. Sub. for H. B. 1342—By Mr. Speaker, Mr. Kopp)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a 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 eight-a, all relating to increasing salaries of auxiliary and service school personnel; redefining certain job classifications and adding a new aide classification; requiring annual review of classifications by county boards of education and authorizing state superintendent to withhold funds from county boards in event of improper classification; and requiring report to Legislature on certain personnel data.

Be it enacted by the Legislature of West Virginia:

That section eight, article four, chapter eighteen-a 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 eight-a, all to read as follows:

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service and auxiliary personnel; definitions.

§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

§18A-4-8. Employment term and class titles of service and auxiliary personnel; definitions.

1 The purpose of this section is to establish an employment
 2 term and class titles for auxiliary and service personnel. The
 3 employment term for auxiliary and service personnel shall be
 4 no less than ten months, a month being defined as twenty
 5 employment days: *Provided*, That the county board of educa-
 6 tion may contract with all or part of such personnel for a
 7 longer term. The beginning and closing dates of the ten-
 8 month term shall not exceed forty-three weeks. Auxiliary
 9 and service personnel employed on a yearly or twelve-month

10 basis may be employed by calendar months. Whenever there
11 is a change in job assignment during the school year, the
12 minimum pay scale and any county supplement shall be
13 applicable.

14 Auxiliary and service personnel employed in the same
15 classification for more than the two hundred day minimum
16 employment term shall be paid for such additional employment
17 at a daily rate of no less than the daily rate paid for the
18 two hundred day minimum employment term.

19 Upon the change in classification or upon meeting the
20 requirements of an advanced classification of or by any em-
21 ployee, his salary shall be made to comply with the require-
22 ments of this article, and to any county salary schedule in
23 excess of the minimum requirements of this article,
24 based upon his advanced classification and allowable years of
25 employment.

26 An employee's contract as provided in sections four and
27 five, article two of this chapter shall state the appropriate
28 monthly salary the employee is to be paid based on the
29 class title as provided in this article and any county salary
30 schedule in excess of the minimum requirements of this article.

31 The column heads of the state minimum pay scale and class
32 titles, set forth in section eight-a of this article, are defined
33 as follows:

34 "Pay grade" means the monthly salary applicable to class
35 titles of auxiliary and service personnel.

36 "Years of employment" means the number of years which
37 an employee classified as auxiliary or service personnel has
38 been employed by a board of education in any position prior
39 to or subsequent to the effective date of this section and
40 including service in the armed forces of the United States
41 if the employee were employed at the time of his induction.
42 For the purpose of section eight-a of this article, years of
43 employment shall be limited to the number of years shown and
44 allowed under the state minimum pay scale as set forth in
45 section eight-a of this article.

46 “Class title” means the name of the position or job held
47 by auxiliary and service personnel.

48 “Accountant I” means personnel employed to maintain
49 payroll records and reports and perform one or more opera-
50 tions relating to a phase of the total payroll.

51 “Accountant II” means personnel employed to maintain
52 accounting records and to be responsible for the accounting
53 process associated with billing, budgets, purchasing and re-
54 lated operations.

55 “Accountant III” means personnel who are employed in
56 the county board of education office to manage and supervise
57 accounts payable and/or payroll procedures.

58 “Aide I” means auxiliary personnel as defined in section
59 one, article one of this chapter.

60 “Aide II” means auxiliary personnel as defined in section
61 one, article one of this chapter, who have completed a train-
62 ing program approved by the state board of education, or who
63 hold a high school diploma or who have received a general
64 educational development certificate.

65 “Aide III” means auxiliary personnel who hold a high
66 school diploma or a general educational development certifi-
67 cate, and who have completed six semester hours of college
68 credit at a higher educational institution.

69 “Audiovisual technician” means personnel employed to per-
70 form minor maintenance on audiovisual equipment, films,
71 supplies and the filling of requests for equipment.

72 “Bus operator” means personnel employed to operate school
73 buses and other school transportation vehicles as provided by
74 the state board of education.

75 “Buyer” means personnel employed to review and write
76 specifications, negotiate purchase bids and recommend pur-
77 chase agreements for materials and services that meet prede-
78 termined specifications at the lowest available costs.

79 “Cabinet maker” means personnel employed to construct
80 cabinets, tables, bookcases and other furniture.

81 "Cafeteria manager" means personnel employed to direct
82 the operation of a food services program in a school, includ-
83 ing assigning duties to employees, approving requisitions
84 for supplies and repairs, keeping inventories, inspecting areas
85 to maintain high standards of sanitation, preparing finan-
86 cial reports and keeping records pertinent to food services
87 of a school.

88 "Carpenter I" means personnel classified as a carpenter's
89 helper.

90 "Carpenter II" means personnel classified as a journeyman
91 carpenter.

92 "Chief mechanic" means personnel employed to be re-
93 sponsible for directing activities which ensure that student
94 transportation or other board-owned vehicles are properly
95 and safely maintained.

96 "Clerk I" means personnel employed to perform clerical
97 tasks.

98 "Clerk II" means personnel employed to perform general
99 clerical tasks, prepare reports and tabulations and operate
100 office machines.

101 "Computer operator" means qualified personnel employed
102 to operate computers.

103 "Cook I" means personnel employed as a cook's helper.

104 "Cook II" means personnel employed to interpret menus,
105 to prepare and serve meals in a food service program of a
106 school and shall include personnel who have been employed as
107 a "Cook I" for a period of four years, if such personnel have
108 not been elevated to this classification within that period
109 of time.

110 "Cook III" means personnel employed to prepare and
111 serve meals, make reports, prepare requisitions for supplies,
112 order equipment and repairs for a food service program of a
113 school system.

114 "Crew leader" means personnel employed to organize the

- 115 work for a crew of maintenance employees to carry out as-
116 signed projects.
- 117 “Custodian I” means personnel employed to keep buildings
118 clean and free of refuse.
- 119 “Custodian II” means personnel employed as a watchman
120 or groundsman.
- 121 “Custodian III” means personnel employed to keep build-
122 ings clean and free of refuse, to operate the heating or cooling
123 systems and to make minor repairs.
- 124 “Custodian IV” means personnel employed as head cus-
125 todians. In addition to providing services as defined in “Cus-
126 todian III,” their duties may include supervising other custo-
127 dian personnel.
- 128 “Director or coordinator of services” means personnel not
129 defined as professional personnel or professional educators
130 in section one, article one of this chapter, who are assigned
131 to direct a department or division.
- 132 “Draftsman” means personnel employed to plan, design
133 and produce detailed architectural/engineering drawings.
- 134 “Electrician I” means personnel employed as an appren-
135 tice electrician helper or who holds an electrician helper license
136 issued by the state fire marshal.
- 137 “Electrician II” means personnel employed as an electri-
138 cian journeyman or who holds a journeyman electrician license
139 issued by the state fire marshal.
- 140 “Electronic technician I” means personnel employed at the
141 apprentice level to repair and maintain electronic equip-
142 ment.
- 143 “Electronic technician II” means personnel employed at
144 the journeyman level to repair and maintain electronic
145 equipment.
- 146 “Executive secretary” means personnel employed as the
147 county school superintendent’s secretary or as a secretary
148 who is assigned to a position characterized by significant ad-
149 ministrative duties.

150 "Food services supervisor" means qualified personnel not
151 defined as professional personnel or professional educators
152 as in section one, article one of this chapter, employed
153 to manage and supervise a county school system's food
154 service program. The duties would include preparing in-
155 service training programs for cooks and food service em-
156 ployees, instructing personnel in the areas of quantity cook-
157 ing with economy and efficiency, and keeping aggregate records
158 and reports.

159 "Foremen" means skilled persons employed for super-
160 vision of personnel who work in the areas of repair and
161 maintenance of school property and equipment.

162 "General maintenance" means personnel employed as
163 helpers to skilled maintenance employees and to perform
164 minor repairs to equipment and buildings of a county school
165 system.

166 "Glazier" means personnel employed to replace glass or
167 other materials in windows and doors and to do minor carpen-
168 try tasks.

169 "Graphic artist" means personnel employed to prepare
170 graphic illustrations.

171 "Groundsmen" means personnel employed to perform duties
172 that relate to the appearance, repair and general care of
173 school grounds in a county school system. Additional assign-
174 ments may include the operation of a small heating plant
175 and routine cleaning duties in buildings.

176 "Handyman" means personnel employed to perform routine
177 manual tasks in any operation of the county school system.

178 "Heating and air conditioning mechanic I" means per-
179 sonnel employed at the apprentice level to install, repair
180 and maintain heating and air conditioning plants and related
181 electrical equipment.

182 "Heating and air conditioning mechanic II" means per-
183 sonnel employed at the journeyman level to install, repair
184 and maintain heating and air conditioning plants and related
185 electrical equipment.

- 186 “Heavy equipment operator” means personnel employed to
187 operate heavy equipment.
- 188 “Inventory supervisor” means personnel who are employed
189 to supervise or maintain operations in the receipt, storage,
190 inventory and issuance of materials and supplies.
- 191 “Key punch operator” means qualified personnel employed
192 to operate key punch machines or verifying machines.
- 193 “Locksmith” means personnel employed to repair and main-
194 tain locks and safes.
- 195 “Lubrication man” means personnel employed to lubricate
196 and service gasoline or diesel-powered equipment of a county
197 school system.
- 198 “Machinist” means personnel employed to perform ma-
199 chinist tasks which include the ability to operate a lathe,
200 planer, shaper, threading machine and wheel press. Such
201 personnel should also have ability to work from blueprints
202 and drawings.
- 203 “Maintenance clerk” means personnel employed to main-
204 tain and control a stocking facility to keep adequate tools
205 and supplies on hand for daily withdrawal for all school
206 maintenance crafts.
- 207 “Mason” means personnel employed to perform tasks con-
208 nected with brick and block laying and carpentry tasks related
209 to such laying.
- 210 “Mechanic” means personnel employed who can inde-
211 pendently perform skilled duties in the maintenance and
212 repair of automobiles, school buses and other mechanical and
213 mobile equipment to use in a county school system.
- 214 “Mechanic assistant” means personnel employed as a me-
215 chanic apprentice and helper.
- 216 “Office equipment repairman I” means personnel employed
217 as an office equipment repairman apprentice or helper.
- 218 “Office equipment repairman II” means personnel respon-
219 sible for servicing and repairing all office machines and

220 equipment. Such personnel shall be responsible for parts be-
221 ing purchased necessary for the proper operation of a program
222 of continuous maintenance and repair.

223 "Painter" means personnel employed to perform duties of
224 painting, finishing and decorating of wood, metal and con-
225 crete surfaces of buildings, other structures, equipment, ma-
226 chinery and furnishings of a county school system.

227 "Plumber I" means personnel employed as an apprentice
228 plumber and helper.

229 "Plumber II" means personnel employed as a journeyman
230 plumber.

231 "Printing operator" means personnel employed to operate
232 duplication equipment, and as required, to cut, collate, staple,
233 bind and shelve materials.

234 "Printing supervisor" means personnel employed to super-
235 vise the operation of a print shop.

236 "Programmer" means personnel employed to design and
237 prepare programs for computer operation.

238 "Roofing/sheet metal mechanic" means personnel employed
239 to install, repair, fabricate and maintain roofs, gutters, flash-
240 ing and duct work for heating and ventilation.

241 "School bus supervisor" means qualified personnel
242 employed to assist in selecting school bus operators and rout-
243 ing and scheduling of school buses, operate a bus when needed,
244 relay instructions to bus operators, plan emergency routing
245 of buses and promoting good relationships with parents,
246 pupils, bus operators and other employees.

247 "Secretary I" means personnel employed to transcribe from
248 notes or mechanic equipment, receive callers, perform clerical
249 tasks, prepare reports and operate office machines.

250 "Secretary II" means personnel employed as school, office
251 or program secretaries to perform general clerical tasks,
252 transcribe, prepare reports, receive callers and refer them
253 to proper persons, operate office machines, keep records and
254 handle routine correspondence.

255 “Secretary III” means personnel assigned to the county
256 board of education office administrators in charge of var-
257 ious instructional, maintenance, transportation, food services,
258 operations and health departments, federal programs or
259 departments with particular responsibilities of purchasing and
260 financial control.

261 “Supervisor of maintenance” means skilled personnel not
262 defined as professional personnel or professional educators
263 as in section one, article one of this chapter. His
264 responsibilities would include directing the upkeep of
265 buildings and shops, issuing instructions to subordinates
266 relating to cleaning, repairs and maintenance of all
267 structures, mechanical and electrical equipment of a board
268 of education.

269 “Supervisor of transportation” means qualified personnel
270 employed to direct school transportation activities, properly
271 and safely, and to supervise the maintenance and repair of
272 vehicles, buses, and other mechanical and mobile equipment
273 used by the county school system.

274 “Switchboard operator-receptionist” means personnel em-
275 ployed to refer incoming calls, to assume contact with the pub-
276 lic, to direct and to give instructions as necessary, to operate
277 switchboard equipment and to provide clerical assistance.

278 “Truck driver” means personnel employed to operate light
279 or heavy duty gasoline and diesel-powered vehicles.

280 “Warehouse clerk” means personnel employed to be re-
281 sponsible for receiving, storing, packing and shipping goods.

282 “Watchman” means personnel employed to protect school
283 property against damage or theft. Additional assignments may
284 include operation of a small heating plant and routine clean-
285 ing duties.

286 “Welder” means personnel employed to provide acetylene
287 or electric welding services for a school system.

288 In addition to the compensation provided for in section
289 eight-a of this article, for auxiliary and service personnel, each
290 auxiliary and service employee shall, notwithstanding any
291 provisions in this code to the contrary, be entitled to all aux-
292 iliary and service personnel employee rights, privileges and
293 benefits provided under this or any other chapter of this code
294 without regard to such employee's hours of employment or
295 the methods or sources of compensation.

296 Auxiliary and service personnel whose years of employment
297 exceed the number of years shown and provided for under the
298 state minimum pay scale set forth in section eight-a of this
299 article, shall not be paid less than the amount shown for the
300 maximum years of employment shown and provided for in
301 the classification in which he is employed.

302 The county board of education may establish salary sched-
303 ules which shall be in excess of the state minimum fixed by
304 this article, such county schedules to be uniform throughout
305 the county with regard to any training classification, experi-
306 ence, years of employment, responsibility, duties, pupil partic-
307 ipation, pupil enrollment, size of buildings, operation of equip-
308 ment or other requirements. Uniformity shall apply to any
309 additional salary increments or compensation for all persons
310 performing like assignments and duties within the county.
311 In establishing such local salary schedules no county, from the
312 effective date of this article, shall reduce local funds allocated
313 for auxiliary and service personnel salaries used for supple-
314 menting federal and state funds provided for such salaries.

315 The county boards shall review each auxiliary and service
316 personnel employee job classification annually and shall re-
317 classify all auxiliary and service employees as required by such
318 job classifications. The state superintendent of schools is here-
319 by authorized to withhold state funds appropriated pursuant

320 to this article for salaries for auxiliary and service personnel
321 who are improperly classified by such county boards.

322 The state board of education is hereby authorized to estab-
323 lish other class titles of auxiliary and service personnel posi-
324 tions and jobs not listed in this section. The state board of
325 education is further authorized to provide appropriate pay
326 grades for such positions and jobs but pay shall be established
327 within the minimum salary scale in section eight-a of this
328 article.

329 No auxiliary or service employee, without his written con-
330 sent, shall be reclassified by class title or relegated to any
331 condition of employment which would result in a reduction
332 of his salary earned during the current fiscal year or which
333 would result in a reduction of his salary for which he would
334 qualify by continuing in the same job position and classifica-
335 tion held during said fiscal year.

336 Any board failing to comply with the provisions of this
337 article may be compelled to do so by mandamus, and shall be
338 liable to any party prevailing against the board for court
339 costs and his reasonable attorney fee, as determined and
340 established by the court.

341 The provisions of this section shall become effective the
342 first day of July, one thousand nine hundred seventy-eight.

343 The state superintendent of schools shall compile, from
344 information submitted by the county boards of education, a
345 report containing the number of personnel, pay classifications
346 and years of experience of custodians and other auxiliary and
347 service personnel who are required to work an interrupted
348 daily work schedule, and the ratio of cooks to school lunches
349 served and shall report to the Legislature on the first day of the
350 regular session thereof in the year one thousand nine hundred
351 seventy-nine his findings, conclusions and recommendations
352 with respect to such matters.

§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

YEARS OF EMPLOY- MENT	PAY GRADE							
	A	B	C	D	E	F	G	H
0	510	530	570	620	670	730	760	830
1	520	540	580	630	680	740	770	840
2	530	550	590	640	690	750	780	850
3	540	560	600	650	700	760	790	860
4	550	570	610	660	710	770	800	870
5	560	580	620	670	720	780	810	880
6	570	590	630	680	730	790	820	890
7	580	600	640	690	740	800	830	900
8	590	610	650	700	750	810	840	910
9	600	620	660	710	760	820	850	920
10	610	630	670	720	770	830	860	930
11	620	640	680	730	780	840	870	940
12	630	650	690	740	790	850	880	950
13	640	660	700	750	800	860	890	960

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Aide I	A
Aide II	B
Aide III	C
Audiovisual Technician	C
Bus Operator	D
Buyer	F
Cabinet Maker	G
Cafeteria Manager	D
Carpenter I	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C

CLASS TITLE	PAY GRADE
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	F
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Locksmith	G
Lubrication Man	C
Machinist	F
Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Plumber I	E

CLASS TITLE	PAY GRADE
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C
Watchman	B
Welder	F

1 On and after the first day of July, one thousand nine hun-
 2 dred seventy-eight, the minimum monthly pay for each auxil-
 3 iary and service employee whose employment is for a period
 4 of more than three and one-half hours a day shall be at least
 5 the amounts indicated in the "state minimum pay scale" as
 6 set forth in this section, and the minimum monthly pay for
 7 each auxiliary and service employee whose employment is
 8 for a period of three and one-half hours or less a day shall be
 9 at least one half the amount indicated in the "state minimum
 10 pay scale" set forth in this section.

CHAPTER 43

(Com. Sub. for H. B. 936—By Mr. Shepherd and Mr. Mathis)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine, twenty-one, thirty-two and thirty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one by adding thereto a new section,

designated section forty-seven; to amend and reenact sections three, ten, eleven, twelve, thirteen, twenty-one, twenty-two, twenty-seven, twenty-eight and thirty, article two of said chapter; to amend article three of said chapter by adding thereto a new section, designated section five-a; to amend and reenact section eleven, article four-a of said chapter; to amend and reenact sections one, six, seven, nine and ten, article five of said chapter; to further amend said article five by adding thereto a new section, designated section one-a; to amend and reenact section five, article six of said chapter; to amend and reenact sections five, five-a, eight and twelve, article eight of said chapter; to amend and reenact sections thirteen, fourteen and twenty-four, article nine of said chapter, all relating to elections; political party committees; how composed; providing for executive committee districts; organization; printing of ballots; use of candidates titles; opening and closing of polls, procedure; permitting voting after closing of the polls in certain cases by use of voter permits; preservation of spoiled ballots; use of ballpoint pens; assistance to voters; providing certain requirements before assistance to voter may be given; requiring certain affidavits; requiring lists of persons given assistance; defining disability; prohibiting candidates from running for more than one office except under limited circumstances; changing time for registration of voters; cancellation and reinstatement; requiring county commission to remain open for registration; appointment of registrars; qualifications and duties; compensation of registrars; checking notices; eliminating quadrennial checkup of county voter registration; retaining biennial checkup option; registration; creating temporary field offices for voter registration; advertising such offices; changing times for registration transfers; procedure on change of registered voter's name; changing times thereof; time for registration prior to election changed; requiring the office of the clerk of the county commission to remain open during certain times for the purpose of registration; providing for hand delivery to clerk of circuit court of absent voter's ballot by person other than voter; ballot labels, instructions and other supplies; vacancy changes; procedure and requirements; time and place of holding primary elections; primary elections changed to June and filing deadline changed to March, except in the year one thousand nine hundred seventy-eight; hours polls open; election of county board of education

members at primary elections; candidate for county board of education to be identified by magisterial district except in the year one thousand nine hundred seventy-eight; filing announcements of candidacies; requirements; filing procedure for candidate for delegates to national conventions of political parties and certification and publication of ballots pertaining to candidates for delegate to national convention of any political party; statement of presidential preference; certification and posting of candidacies; publication and printing of ballots; number; rules and procedures in elections other than primaries; detailed accounts and verified financial statements required; financial reports required by write-in candidates; use of stamps, stickers and tapes to indicate write-in preference in accordance with rules and regulations by secretary of state; information required in financial statements; disclosure of corporate affiliation; restricting the use of certain corporate property to influence elections; corporate contributions; limitations on contributions to candidates; requiring that corporations permit employees to use corporations real property for establishing, administering and soliciting contributions; exceptions; limitations; defining contributions; exceptions; prohibitions applicable to public utilities and railroad companies; the powers and duties of the state election commission with respect thereto; conferring certain investigative powers to said commission; duties of the attorney general; buying or selling votes unlawful; limitations on prosecutions extended to five years; prohibiting certain activities; and providing penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

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

seven, nine and ten, article five of said chapter be amended and re-enacted; that said article five be further amended by adding thereto a new section, designated section one-a; that section five, article six of said chapter be amended and reenacted; that sections five, five-a, eight and twelve, article eight of said chapter be amended and re-enacted; that sections thirteen, fourteen and twenty-four, article nine of said chapter be amended and reenacted, all to read as follows:

Article

1. **General Provisions and Definitions.**
2. **Registration of Voters.**
3. **Voting by Absentees.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**
8. **Regulation and Control of Elections.**
9. **Offenses and Penalties.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-9. Political party committees; how composed; organization.
 §3-1-21. Printing of ballots; number and requirements; packaging and sealing.
 §3-1-32. Opening and closing polls; procedure.
 §3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
 §3-1-47. Candidate not to run for more than one office; exceptions.

§3-1-9. Political party committees; how composed; organization.

1 At the June primary election in the year one thousand nine
 2 hundred eighty and at the June primary election in the year
 3 one thousand nine hundred eighty-two, and in every fourth
 4 year thereafter, the voters of each political party in each
 5 senatorial district shall elect two male and two female members
 6 of the state executive committee of the party. In senatorial
 7 districts containing two or more counties, not more than two
 8 such elected committee members shall be residents of the
 9 same county. The committee, when convened and organized
 10 as herein provided, shall appoint three additional members
 11 of the committee from the state at large.

12 At such primary election, the voters of each political party
 13 in each county shall elect one male and one female member
 14 of the party's executive committee of the congressional district,
 15 of the senatorial district in which such county is situated and
 16 of the delegate district in which such county is situated if

17 such county be situated in a delegate district. At the same
18 time such voters in each magisterial district or executive
19 committee district, as the case may be, of the county shall elect
20 one male and one female member of the party's county
21 executive committee.

22 For the purpose of complying with the provisions of this
23 section the county commission shall create such executive com-
24 mittee districts as they shall determine, which such districts
25 shall not be fewer than the number of magisterial districts
26 in such counties nor shall they exceed in number the fol-
27 lowing: Fifty for counties having a population of one hundred
28 thousand persons or more; forty for counties having a
29 population of fifty thousand to one hundred thousand; ten
30 for counties having a population of thirty thousand to fifty
31 thousand; and such districts in counties having a population of
32 less than thirty thousand persons shall be coextensive with
33 the magisterial districts.

34 The executive committee districts shall not cross magisterial
35 district lines, shall be as nearly equal in population as prac-
36 ticable, and shall each be composed of compact, contiguous
37 territory. The county commissions shall constitute the execu-
38 tive committee district to be effective for the term of office
39 of executive committee members elected at the one thou-
40 sand nine hundred seventy-eight primary election and there-
41 after. The county commissions shall change the territorial
42 boundaries of such districts as necessary, only if there is an
43 increase or decrease in the population of such district as
44 determined by a decennial census and such changes must be
45 made within two years following such census.

46 All members of executive committees, selected for each
47 political division as herein provided, shall reside within the
48 county or district from which chosen. The term of office of all
49 members of executive committees elected at the June primary
50 in the year one thousand nine hundred eighty, shall begin on the
51 first day of July, following said June primary, and shall con-
52 tinue for two years thereafter and until their successors are
53 elected and qualified. Vacancies in the state executive com-
54 mittee shall be filled by the members of the committee for
55 the unexpired term. Vacancies in the party's executive com-

56 mittee of a congressional district, senatorial district, delegate
57 district or county shall be filled by the party's executive com-
58 mittee of the county in which such vacancy exists, and shall be
59 for the unexpired term.

60 As soon as possible after the first day of July, following
61 the election of the new executive committees, as herein pro-
62 vided, they shall convene within their respective political
63 divisions, on the call of the chairman of corresponding out-
64 going executive committees, or by any member of the new
65 executive committee in the event there is no corresponding
66 outgoing executive committee, and proceed to select a chair-
67 man, a treasurer, and a secretary, and such other officers as
68 they may desire, each of which officers shall for their respec-
69 tive committees perform the duties that usually appertain to
70 such offices.

§3-1-21. Printing of ballots; number and requirements; packaging and sealing.

1 It shall be the duty of the board of ballot commissioners for
2 each county to provide printed ballots for every election for
3 public officers in which the voters or any of the voters within
4 the county participate, and cause to be printed, on the ap-
5 propriate ballot, the name of every candidate, but in no case
6 shall the ballot contain any title, position, rank, degree, or such,
7 including but not limited to doctor, reverend, PhD., or the
8 equivalent, whose name has been certified to or filed with the
9 clerk of the circuit court of the county in any manner pro-
10 vided for in this chapter. In any case wherein the Constitution
11 or statutes limit or prescribe the number of candidates or
12 elected officers to be selected by the voters in any district or
13 other governmental subdivision, the ballot commissioners, in
14 the preparation of such ballots, shall cause to be printed
15 thereon, in plainly worded language, the number of candidates
16 to be voted for in each district or other governmental sub-
17 division. The printing of the ballots, and all other printing
18 caused to be done by the board of ballot commissioners, shall
19 be contracted for with the lowest responsible bidder. Ballots
20 other than those caused to be printed by the respective boards
21 of ballot commissioners, according to the provisions of this
22 chapter, shall not be cast, received or counted in any election.

23 For each such election to be held in their county and at
24 least thirty days before the date of such election, the board
25 of ballot commissioners shall cause to be printed official bal-
26 lots to not more than one and one-fifth times the number of
27 registered voters in the county. Provisions of article five of
28 this chapter shall govern the printing of ballots for primary
29 elections. The ballots so printed shall be wrapped and tied
30 in packages, one for each precinct in their county, containing
31 ballots to the number of one and one-twentieth times the num-
32 ber of registered voters in such precinct. Each package of
33 ballots shall be sealed with wax, and plainly marked with the
34 number of ballots therein, the name of the magisterial district,
35 and the number of the voting place therein, to which it is in-
36 tended to be sent. The names of the ballot commissioners shall
37 also be endorsed thereon.

§3-1-32. Opening and closing polls; procedure.

1 At the time of opening the polls in all precincts wherein
2 voting machines are not to be used, the election commissioners
3 shall examine the ballot box and ascertain that there are no
4 ballots in the same, and they shall thereupon securely lock
5 the box and give one key to one of the commissioners and
6 one to a commissioner of the opposite political party, who
7 shall hold the same, and such boxes shall not be again
8 opened until the time to begin counting the votes arrives
9 and for that purpose. At or before opening the polls, the
10 commissioners of election shall open the package contain-
11 ing the ballots in such manner as to preserve the seals intact
12 and thereupon deliver all of the ballots to the poll clerk.
13 Before any voter is permitted to vote, the commissioners of
14 election shall proclaim that such election is opened. When the
15 polls are closed, proclamation must be made of the fact by
16 one of the commissioners of election to the people outside, in
17 a loud and audible tone of voice, and a minute of such
18 proclamation and of the time when it was made must be
19 entered on the pollbooks by the clerks. The election com-
20 missioner shall permit those electors to vote who are present
21 at the polling place prior to the hour specified for the closing
22 of the polls: *Provided*, That at that time they are in a line
23 awaiting their turn to vote within the voting room itself or, if

24 the line extends outside of the voting room itself, within
25 that line. In that event an election commissioner from each
26 party shall immediately after the closing proclamation begin
27 with the last voter in line and together supply the voters
28 within the line with waiting-voter permits which shall be
29 prescribed by the secretary of state. Each voter shall sign
30 his permit in the presence of both commissioners who shall
31 then likewise affix their signatures to the permit in the
32 presence of the voter and each other. After each such voter
33 in line has received and signed his permit and the election
34 commissioners have affixed their signatures thereto, voting
35 shall be resumed. Each voter shall present his permit to one
36 of the poll clerks so that the signature thereon may be com-
37 pared to the voter's signature when he signs the pollbook.
38 Each permit so presented shall be attached to the page in
39 the pollbook on which the voter affixed his signature. In no
40 case shall any person who arrives at the polling place after
41 the closing hour be given a waiting-voter permit or be allowed
42 to vote. After the final voter presents his waiting-voter permit
43 and casts his ballot no more ballots shall be cast or received.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

1 Any person offering to vote in an election shall, upon enter-
2 ing the election room, clearly state his name and residence
3 to one of the poll clerks who shall thereupon announce the
4 same in a clear and distinct tone of voice. If such person is
5 found to be duly registered as a voter at that precinct, he shall
6 be required to sign his name in the space marked "signature
7 of voter" on the pollbook prescribed and provided for the
8 precinct. If such person be physically or otherwise unable to
9 sign his name, his mark shall be affixed by one of the poll
10 clerks in the presence of the other and the name of the poll
11 clerk affixing the voter's mark shall be indicated immediately
12 under such affixation. No ballot shall be given to such person
13 until he so signs his name on the pollbook or his signature is
14 so affixed thereon.

15 When the voter's signature is properly on the pollbook, the
16 two poll clerks shall sign their names in the places indicated on
17 the back of the official ballot and shall deliver the ballot to

18 the voter to be voted by him then without leaving the election
19 room. If he returns the ballot spoiled to the clerks, they shall
20 immediately mark such ballot "spoiled" and the same shall be
21 preserved and placed in a spoiled ballot envelope together with
22 other spoiled ballots to be delivered to the board of canvassers
23 and deliver to the voter another official ballot, signed by the
24 clerks on the reverse side as before done. The voter shall there-
25 upon retire alone to the booth or compartment prepared within
26 the election room for voting purposes and there prepare his
27 ballot, using a ballpoint pen of not less than five inches in
28 length or other indelible marking device of not less than five
29 inches in length. In voting for candidates in general and spe-
30 cial elections, the voter shall comply with the rules and pro-
31 cedures prescribed in section five, article six of this chapter.

32 It shall be the duty of a poll clerk, in the presence of the
33 other poll clerk, to indicate by a check mark inserted in the ap-
34 propriate place on the registration record of each voter the fact
35 that such voter voted in the election. In primary elections the
36 clerk shall also insert thereon a distinguishing initial or initials
37 of the political party for whose candidates the voter voted. If a
38 person is challenged at the polls, such fact shall be indicated by
39 the poll clerks on the registration record together with the name
40 of the challenger. The subsequent removal of the challenge
41 shall be recorded on the registration record by the clerk of the
42 county commission.

43 No voter shall receive any assistance in voting unless (1) (a)
44 his registration record indicates that because of illiteracy, he is
45 unable to read the names on the ballot, or that he has a physical
46 disability which renders him unable to see or mark the ballot, or
47 to operate the voting machine, the exact nature of the physical
48 disability being recorded on the registration record, or (b) he
49 shall make an affidavit, the form of which shall be prescribed
50 by the secretary of state, that because of a physical disability
51 which renders him unable to see or mark the ballot, or to oper-
52 ate the voting machine, the exact nature of the physical disabili-
53 ty being stated therein; and (2) a poll clerk of each political
54 party determines that he is illiterate or suffers from the physical
55 disability stated on his registration record or in his affidavit and
56 that such physical disability renders him then unable to see or
57 mark the ballot, or to operate the voting machine.

58 Any voter so determined to be qualified to receive assistance
59 in voting under the provisions of this section may declare his
60 choice of candidates to an election commissioner of each politi-
61 cal party who, in the presence of the voter and in the presence
62 of each other, shall prepare the ballot for voting in the manner
63 hereinbefore provided, and, on request, shall read over to such
64 voter the names of candidates on the ballot as so prepared; or
65 such voter may require the election commissioners to indicate
66 to him the relative position of the names of the candidates on
67 the ballot, whereupon the voter shall retire to one of the booths
68 or compartments to prepare his ballot in the manner hereinbe-
69 fore provided, or may request the election commissioners, in the
70 presence of the voter and in the presence of each other, to mark
71 the ballot as he directs.

72 If the voter is unable to mark his ballot because of blindness
73 and the voter's registration records so indicate such blindness,
74 and if he shall so elect, said poll clerks shall both withdraw, and
75 permit the voter to be assisted by any duly registered voter
76 designated by such voter.

77 Any voter who requests assistance in voting but who is
78 determined not to be qualified for such assistance under the
79 provisions of this section shall nevertheless be permitted to
80 vote a challenged ballot with the assistance of any person
81 herein authorized to render assistance.

82 Any one or more of the election commissioners or poll clerks
83 in the precinct may challenge such ballot on the ground that the
84 voter thereof received assistance in voting it when in his or their
85 opinion (1) either the registration record or affidavit of the per-
86 son who received the assistance in voting the ballot does not in-
87 dicate a legally sufficient reason for such assistance, or (2) the
88 person who received assistance in voting is not so illiterate as to
89 have been unable to read the names on the ballot, or (3) that he
90 did not have such a physical disability as to have been unable to
91 see or mark the ballot or to operate the voting machine. The
92 election commissoiner or poll clerk or commissioners or poll
93 clerks making such challenge shall enter the challenge and rea-
94 son therefor on the form and in the manner prescribed or
95 authorized by article three of this chapter.

96 Election commissioners providing assistance to voters under
97 the provisions of this section shall not in any manner request,
98 or seek to persuade, or induce the voter to vote any particular
99 ticket or for any particular candidate or for or against any pub-
100 lic question, and shall not keep or make any memorandum or
101 entry of anything occurring within the voting booth or compart-
102 ment, and shall not, directly or indirectly, reveal to any person
103 the name of any candidate voted for by the voter, or which tick-
104 et he had voted, or how he had voted on any public question, or
105 anything occurring within the voting booth or compartment or
106 voting machine booth, except when required pursuant to law to
107 give testimony as to such matter in a judicial proceeding.

108 In accordance with instructions issued by the secretary of
109 state, the clerk of the county commission shall provide a form
110 entitled "List of Assisted Voters," the form of which list shall
111 likewise be prescribed by the secretary of state. The commis-
112 sioners shall enter the name of each voter receiving assistance
113 in voting the ballot, together with the poll slip number of that
114 voter and the signature of the commissioner from each party
115 who assisted the voter certifying to the fact that they had
116 determined that the voter who received assistance in voting
117 the ballot was qualified to receive such assistance under the
118 provisions of this section. If no voter shall have been assisted
119 in voting the ballot as herein provided, the commissioners
120 shall likewise make and subscribe to an oath of that fact on
121 such list.

122 After preparing the ballot the voter shall fold the same so
123 that the face shall not be exposed and so that the names of the
124 poll clerks thereon shall be seen. The voter shall then announce
125 his name and present his ballot to one of the commissioners
126 who shall hand the same to another commissioner, of a differ-
127 ent political party, who shall deposit it in the ballot box, if
128 such ballot is the official one and properly signed. The com-
129 missioner of election may inspect every ballot before it is de-
130 posited in the ballot box, to ascertain whether it is single, but
131 without unfolding or unrolling it, so as to disclose its content.
132 When the voter has voted, he shall retire immediately from the
133 election room, and beyond the sixty-foot limit thereof, and
134 shall not return, except by permission of the commissioners.

135 Following the election, the affidavits required by this section
136 from assisted voters together with the "List of Assisted Voters,"
137 shall be returned by the election commissioners to the clerk
138 of the county commission along with the election supplies,
139 records and returns, who shall make such oaths and list avail-
140 able for public inspection and who shall preserve the same for
141 a period of five years or until disposition is authorized or di-
142 rected by the secretary of state, or court of record.

143 Any person making an affidavit required under the pro-
144 visions of this section who shall therein knowingly swear false-
145 ly, or any person who shall counsel, or advise, aid or abet
146 another in the commission of false swearing under this sec-
147 tion, shall be guilty of a misdemeanor, and, upon conviction
148 thereof, shall be fined not more than one thousand dollars, or
149 imprisoned in the county jail for a period of not more than one
150 year, or both.

151 Any election commissioner or poll clerk who authorizes or
152 provides unchallenged assistance to a voter when such voter is
153 known to such election commissioner or poll clerk not to be
154 or have been authorized by the provisions of this section to
155 receive or to have received assistance in voting shall be guilty
156 of a felony, and, upon conviction thereof, shall be fined not
157 more than five thousand dollars, or imprisoned in the peni-
158 tentiary for a period of not less than one year nor more than
159 five years, or both fined and imprisoned.

160 The term "assistance in voting," as used in this section,
161 means assistance in physically marking the official ballot for a
162 voter, or reading or directing the voter's attention to any part of
163 the official ballot, or physically operating the voting machine.

164 The term "physical disability," as used in this section, means
165 blindness or such degree of blindness as will prevent the voter
166 from seeing the names on the ballot, or amputation of both
167 hands, or such disability of both upper extremities that neither
168 can be used to make cross marks on the ballot, or operate the
169 voting machine, or confinement to wheelchair which prevents
170 or restricts use of voting machine.

§3-1-47. Candidate not to run for more than one office; exceptions.

1 No person shall be a candidate for more than one office

2 at any election: *Provided*, That such candidate for an office
3 may also be a candidate for president or vice president of
4 the United States, for membership on a political party execu-
5 tive committee or for delegate to a political party national
6 convention. Any candidate who violates this section shall be
7 disqualified from serving in any office to which he was elected
8 while in violation of this section.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-3. Registration, cancellation and reinstatement.

§3-2-10. County commission's duties and powers; hours during registration period.

§3-2-11. Appointment of registrars; qualifications and duties.

§3-2-12. Additional duties of registrars and clerks; checking; notices.

§3-2-13. Compensation of registrars.

§3-2-21. Biennial checkup.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

§3-2-27. Registration transfers.

§3-2-28. Procedure on change of registered voter's name.

§3-2-30. Time of registration prior to election; changes.

§3-2-3. Registration, cancellation and reinstatement.

1 A permanent registration system shall hereby be established
2 which shall be uniform throughout the state and all of its
3 subdivisions. No voter so registered shall be required to
4 register again for any election while he continues to reside
5 at the same address, or, having moved from such address, is
6 properly transferred according to the provisions of section
7 twenty-seven of this article, unless his registration is canceled
8 as provided in this article.

9 Within one hundred and twenty days following any election,
10 the clerk of the county commission shall, as evidenced by the
11 presence or absence of signatures on the pollbooks for such
12 election, correct any errors or omissions on the voter registra-
13 tion records appertaining to such election resulting from the
14 poll clerks erroneously checking or failing to check the registra-
15 tion records as required by the provisions of section thirty-four,
16 article one of this chapter; and, within the same time period
17 following each statewide primary and general election and at
18 the same time that such checkup is made as is by this para-
19 graph required, the clerk shall cancel the registration of each
20 person who has failed to vote at least once during a period

21 covering two statewide primary and general elections as in-
22 dicated by his registration record. Any person who has had
23 his registration for that reason canceled shall, by letter, be
24 given proper notice thereof by the clerk of the county
25 commission, to the effect that in order to vote he must register
26 again or execute and file, not later than thirty days before
27 the next primary or general election, with the clerk, an affi-
28 davit, the form of which shall be prescribed by the secretary
29 of state, stating that he desires to be reinstated as a qualified
30 voter at the same address and the clerk shall replace the
31 registration card of the voter in the registration records. A
32 blank form of such affidavit shall be included with and accom-
33 pany the aforesaid notice to the voter.

§3-2-10. County commission's duties and powers; hours during registration period.

1 Subject to the authority of the secretary of state, the county
2 commission shall be chief registration authority in each
3 respective county and all subdivisions therein, and shall super-
4 vise the county clerk and registrars in the performance of
5 their respective duties.

6 The county commission shall have power on its own motion
7 to summon and to interrogate any person concerning the
8 registration of voters, to investigate any irregularities in
9 registration, to summon and examine witnesses, to require the
10 production of any relevant books and papers, and to conduct
11 hearings on any matters relating to registration of voters.

12 Notwithstanding any provision of any other section of this
13 code, the office of the clerk of the county commission shall
14 remain open from 9:00 a.m. until 9:00 p.m. on the Friday,
15 Saturday and Monday prior to the close of the registration
16 period.

§3-2-11. Appointment of registrars; qualifications and duties.

1 The county commission of each county may, not less than
2 eighteen nor more than twenty weeks prior to the date of a
3 statewide primary election, appoint two competent persons,
4 for one or more but not to exceed ten voting precincts in
5 the county, to act as registrars for the purpose of making a

6 biennial checkup allowed by this article. No person shall
7 be eligible to appointment as a registrar, or in any way act
8 as such, if he has been convicted of a felony; or if he holds
9 any elective or appointive office; or is a public employee,
10 under the laws of this state or of the United States; or cannot
11 read or write the English language; or is a candidate to be
12 voted for at such election. If any such registrar shall fail or
13 refuse to serve or is properly dismissed, the vacancy shall
14 be filled either by the county commission or by the clerk
15 thereof in vacation, in the manner provided for the appoint-
16 ment of registrars. Each registrar, before entering upon the
17 discharge of his duties, shall take an oath that he will perform
18 the duties of the office to the best of his ability, which oath
19 shall be filed in the office of the clerk of the county com-
20 mission.

21 An equal number of such registrars shall be selected from
22 the two political parties which at the last preceding election,
23 cast the highest number and next highest number of votes
24 in the county in which the election is to be held. The county
25 commission shall, at least four weeks prior to making such
26 appointment, request the county executive committee of each
27 of the said two political parties to submit a list of names,
28 equal to one half of the total number to be appointed, of
29 persons qualified to act as registrars; and the county com-
30 mission shall, if such lists are submitted, appoint the respective
31 registrars therefrom, and shall notify each registrar of his
32 appointment. Every such list so presented shall be filed and
33 preserved for one year by the clerk of such commission in
34 his office. Any and every act performed by any registrar
35 under the provisions of this article shall be void unless per-
36 formed in conjunction with a registrar of the opposite political
37 party at the same time and place.

38 Before acting, all such registrars shall attend a session,
39 or sessions, of instruction by the clerk of the county com-
40 mission, or some person designated by him, concerning the
41 performance of their duties.

42 Immediately following such instruction the clerk of the
43 county commission shall deliver to the registrar a copy of

44 the laws and regulations relating to registration of voters and
45 all necessary forms and other supplies, including a certified
46 list of all registered voters within the precinct or precincts
47 for which such registrars were appointed, upon such
48 form as may be prescribed by the secretary of state. Such
49 registrars shall thereupon proceed together to make a house-
50 to-house canvass in their precincts for the purpose of making
51 the biennial checkup allowed by section twenty-one of this
52 article. Each biennial checkup subsequent to the year one
53 thousand nine hundred seventy-eight shall be completed at
54 least sixty days before the statewide primary election follow-
55 ing the appointment of the registrars. In making such checkup
56 the registrars shall not again register any person who is already
57 registered in such precinct, but shall determine whether or
58 not such person is duly registered and qualified to vote therein.

**§3-2-12. Additional duties of registrars and clerks; checking;
notices.**

1 Upon the completion of the biennial checkup, the registrars
2 shall return the records and lists to the clerk of the county
3 commission, together with an affidavit that the returns, records
4 and lists returned to the clerk are true and correct to the
5 best of their knowledge and belief. The clerk of the county
6 commission shall make the necessary changes in his other
7 registration records. The list checked by the registrars in
8 each precinct shall be compared with the register of deaths
9 kept by the clerk of the county commission in his office.
10 Each person named in the list who is not shown to have been
11 found and so checked by the registrars and whose death is
12 not shown on such register shall be given proper notice
13 by the clerk of the county commission that his registration
14 has been canceled and that in order to vote he must register
15 again. The notice shall be mailed to such person's last
16 address appearing on the registration record.

17 The clerk of the county commission is authorized to pub-
18 lish such notices as may be proper in his opinion to advise
19 the electorate of the respective dates after which transfers
20 and registration, and changes of registration, may not be
21 made with respect to any general or primary election.

§3-2-13. Compensation of registrars.

1 As compensation for his services, each registrar shall be
2 paid at a rate to be fixed by the county commission, but not
3 more than twenty-five dollars per day, and, in addition, shall
4 be reimbursed for his travel expenses.

§3-2-21. Biennial checkup.

1 Beginning with the year one thousand nine hundred seventy-
2 eight and every two years subsequent thereto, there may be
3 a biennial checkup of voter registration in each precinct of
4 each county in this state if in the discretion of a county
5 commission such checkup is deemed necessary and advisable
6 for its county. The registrars, according to directions pre-
7 scribed by the secretary of state and as provided in sections
8 eleven and twelve of this article, shall proceed to register
9 the names of all persons not registered but who are qualified
10 to register, and shall also check and, if necessary, alter,
11 amend, correct or cancel the registration records of the voters
12 of the respective precincts, so as to provide a complete and
13 accurate record of all persons qualified to vote.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

1 The clerk of the county commission may register any quali-
2 fied person as a voter by having him fill in and complete the
3 prescribed voter registration form and having him sign same
4 under oath or affirmation. The clerk, upon proper proof, may
5 alter, amend, correct or cancel the registration record of any
6 voter. Such registration or alteration, amendment, correction
7 or cancellation of registration records shall be carried on
8 throughout the year.

9 Beginning with the year one thousand nine hundred seventy-
10 eight and every two years subsequent thereto, the clerk or
11 one of his deputies shall, during the biennial checkup period,
12 for the purposes of registration of voters, visit every public
13 or private institution, excluding hospitals, in which resides
14 aged, infirm, disabled or chronically ill persons and every
15 high school with students eligible by age for registration, and
16 shall establish at least one temporary registration office per

17 magisterial or tax district, whichever is more numerous, for
18 the purpose of registering the names of persons not so regis-
19 tered but who are qualified to register, or to alter, amend, cor-
20 rect or cancel such registration records. Such registration of-
21 fices shall be open at least three days, including one Saturday
22 and one evening within the sixty day period prior to each
23 primary and each general election but prior to the thirtieth
24 day before any such election at such hours as shall be posted
25 and advertised as a Class III-0 legal advertisement with the
26 publication area being the magisterial district. The clerk of the
27 county commission shall also solicit public service advertising
28 of such registration offices and times on radio, television and
29 newspapers serving that county.

30 Any applicant not otherwise included under provisions of
31 previous sections who is physically unable to appear before
32 the clerk of the county commission, or at the temporary office
33 may request the clerk of the county commission or one of his
34 deputies to, and, upon proper request they shall, deliver or
35 cause to be delivered in person or by mail the forms neces-
36 sary to register.

37 Within fifteen days following receipt by the clerk from the
38 state registrar of vital statistics or from the local registrar of
39 vital statistics of a certificate of death which has occurred in
40 his county or of a person who last resided prior to death in his
41 county, the clerk of the county commission shall cancel the
42 voter registration, if any, of the person shown to be deceased
43 by such certificate.

44 For purposes of making certain that the voter registration
45 records of the various counties do not contain voter registra-
46 tion of persons who are deceased, the clerks shall, sixty days
47 prior to a general election, review each certificate of death
48 received by him from the state registrar of vital statistics or
49 from the local registrar of vital statistics and shall cancel
50 the voter registration, if any, of each person shown to be
51 deceased by any such certificate and whose voter registration
52 has not previously been canceled. By the forty-fifth day prior
53 to a general election each clerk of a county commission shall
54 certify to the secretary of state, as the chief registration

55 official of the state, that he has performed the duty required
56 by this paragraph.

57 If found necessary, the county commission may order and
58 direct the clerk of the county commission to maintain addi-
59 tional office hours in the evening or at other proper times and
60 places for accommodation of voter registration.

§3-2-27. Registration transfers.

1 Whenever a voter removes his residence from one place
2 to another within the same county he shall request that the
3 change be made on his registration record. Such request
4 shall be made by filling in, and, if he is able, signing
5 under oath or affirmation the necessary form, which may be
6 procured in person or by mail from the office of the clerk
7 of the county commission, or from the registrars during the
8 biennial checkup. The form of such notice shall be pre-
9 scribed by the secretary of state.

10 Upon receipt of such notice the clerk of the county com-
11 mission shall cause the signature thereon to be compared
12 with the signature of the applicant upon his registration card
13 and, if such signatures correspond, shall make entry of such
14 change of residence upon all the registration records and
15 the necessary transfers in the files. If the clerk of the county
16 commission is not satisfied as to the genuineness of the
17 signature on the notice of change of residence, and if the
18 right of such applicant to register is challenged according to
19 the procedure herein prescribed, such transfer shall not be
20 made.

21 Transfers of the registration record may be made through-
22 out the year except during the thirty days immediately
23 preceding any election, and if any voter shall move from
24 one precinct to another within the county within the thirty-
25 day period, he shall, for that election only, vote in the precinct
26 from which he moved. If any voter shall move from one
27 place to another within the precinct in which he is registered,
28 whether within or more than thirty days preceding any
29 election, he shall be permitted to vote in that precinct, and
30 the election commissioners upon request of the registrant
31 shall make entry of such change of residence upon the voter's

32 registration record in accordance with procedures prescribed
33 by the secretary of state.

§3-2-28. Procedure on change of registered voter's name.

1 Whenever a voter, previously registered, shall change his
2 name, such person shall be required to register again. For
3 this purpose such person may register by mail in the same
4 manner as an absentee registrant, according to the procedure
5 prescribed in section twenty-three of this article. Upon such
6 registration, the clerk of the county commission shall cancel
7 the registration record bearing the voter's former name.
8 When such a change of name is made during the thirty
9 days immediately preceding any election, such voter, if duly
10 registered, may vote at the election under his former name.

§3-2-30. Time of registration prior to election; changes.

1 No person may vote in an election when he has registered
2 or his voter registration has been altered, amended or cor-
3 rected within a period of thirty days next preceding such
4 election, but this inhibition shall not prevent, during such
5 period of thirty days, additional registrations and changes
6 in voter registrations with reference to future elections. If,
7 during such period of thirty days preceding an election, a
8 voter is registered or his voter registration is altered, amended
9 or corrected, he shall not be permitted or qualified to vote at
10 such election.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5a. Hand delivery of absent voter's ballot; penalties.

1 A person who completes the absent voter's ballot provided
2 for by section five of this article may have someone personally
3 deliver the sealed envelope during regular business hours at
4 the office of the clerk of the circuit court of the county in
5 which he is registered to vote not more than fourteen days
6 before the election and on any day thereafter up to and in-
7 cluding the Saturday next preceding the date of the primary or
8 general election or, in the case of special elections, up to and
9 including the third day next preceding the day of any such
10 special election (in computing such third day, the day of con-
11 ducting the special election, shall be excluded): *Provided*, That

12 no person shall be permitted to personally deliver more than
13 two absentee ballots preceding any election.

14 The person who personally delivers the sealed envelope
15 shall be required to certify that he or she has not altered the
16 ballot. Any person who makes a false certification shall be
17 in violation of the penalty provisions of article nine of this
18 chapter and subject to those provisions.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 The ballot commissioners of any county in which an
2 electronic voting system is to be used in any election shall
3 cause to be printed for use in such election the ballots or
4 ballot labels, as appropriate, for the electronic voting system.
5 The ballot labels so printed shall total in number one and one-
6 half times the total number of vote recording devices to be used
7 in the several precincts of the county in such election. All
8 such labels shall be delivered to the clerk of the county com-
9 mission at least thirty days prior to the day of the election
10 in which such labels are to be used. The labels shall contain
11 the name of each candidate, but in no case shall the ballot con-
12 tain any title, position, rank, degree, or such, including but not
13 limited to "doctor," "reverend," "PhD.," or the equivalent, and
14 each question to be voted upon and shall be clearly printed or
15 typed in black ink on clear white material of such size as will fit
16 the vote recording devices. Arrows may be printed on the bal-
17 lot labels to indicate the place to punch the ballot card, which
18 may be to the right or left of the name or proposition.

19 The titles of offices may be arranged on the ballot labels in
20 vertical columns or in a series of separate pages, and shall be
21 printed above or at the side of the names of candidates so as to
22 indicate clearly the candidates for each office and the number
23 to be elected. In case there are more candidates for an office
24 than can be printed in one column or on one ballot label page,
25 the ballot label shall be clearly marked that the list of candi-
26 dates is continued on the following column or page, and so far
27 as possible, the same number of names shall be printed on each
28 column or page. The names of candidates for each office shall

29 be printed in vertical columns or on separate pages, grouped by
30 the offices which they seek.

31 In elections in which voters are authorized to vote for per-
32 sons whose names do not appear on the ballot card, a separate
33 write-in ballot, which may be in the form of a paper ballot or
34 card, shall be provided if required to permit voters to write in
35 the title of the office and the names of persons whose names are
36 not on the ballot, for whom he wishes to vote. The manner of
37 voting for write-in candidates upon electronic voting devices
38 shall be as prescribed by rules and regulations of the secretary
39 of state.

40 One set of ballot labels shall be inserted in the vote recording
41 device prior to the delivery of such device to the polling place.
42 The remainder of such ballot labels for each device shall be re-
43 tained by the clerk of the county commission for use in the
44 event the set so inserted in such device becomes lost, mutilated
45 or damaged.

46 In addition to all other equipment and supplies required by
47 the provisions of this article, the ballot commissioners shall
48 cause to be printed a supply of instruction cards, sample bal-
49 lots, facsimile diagrams of the vote recording device ballot and
50 official printed ballots or ballot cards adequate for the orderly
51 conduct of the election in each precinct in their county. In ad-
52 dition they shall provide all other materials and equipment
53 necessary to the conduct of the election, including voting
54 booths, appropriate facilities for the reception and safekeeping
55 of ballot cards, the ballots of absent voters and of challenged
56 voters and of such "independent" voters who shall, in primary
57 elections, cast their votes on nonpartisan candidates and public
58 questions submitted to the voters.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCE- DURES.

- §3-5-1. Time and place of holding primary elections in the year one thou-
sand nine hundred eighty and thereafter; hours polls open.
- §3-5-1a. Time and place of holding primary elections held in the year one
thousand nine hundred seventy-eight; hours polls open.
- §3-5-6. Election of county board of education members at primary elections.
- §3-5-7. Filing announcements of candidacies; requirements; when section
applicable.

- §3-5-9. Certification and posting of candidates.
§3-5-10. Publication and printing of ballots; number.

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

1 Primary elections shall be held at the voting place in each
2 of the voting precincts in the state, for the purposes set
3 forth in this article, on the first Tuesday in June in the
4 year one thousand nine hundred eighty and in each second
5 year thereafter.

6 At such election the polls shall be opened and closed at
7 the hours provided for opening and closing the polls in a
8 general election.

§3-5-1a. Time and place of holding primary elections held in the year one thousand nine hundred seventy-eight; hours polls open.

1 The primary election held in the year one thousand nine
2 hundred seventy-eight shall be held at the voting place in
3 each of the voting precincts in the state, for the purposes set
4 forth in this article, on the second Tuesday in May in the
5 year one thousand nine hundred seventy-eight.

6 At such election the polls shall be opened and closed at the
7 hours provided for opening and closing the polls in a general
8 election.

§3-5-6. Election of county board of education members at primary elections.

1 An election for the purpose of electing members of the
2 county board of education shall be held on the same date as
3 the primary elections as now provided by law, but upon a
4 nonpartisan ballot printed for the purpose. At the election
5 of members of the county board of education held in the year
6 one thousand nine hundred eighty and each such election held
7 thereafter, each candidate seeking the office shall be identi-
8 fied as to the magisterial district from which he is a resident. In
9 such nonpartisan election the person receiving the highest
10 number of votes shall be elected for a long term, and if more

11 than one is to be elected for a long term, the one receiving
12 the next highest shall be elected; and if more than two are to
13 be elected the candidate or candidates receiving the next highest
14 votes shall be declared elected for any short term or terms,
15 as the case may be, to fill vacancies; but no more than two
16 such members shall be elected from the same magisterial
17 district, and then only when such magisterial district does
18 not have a holdover member of said board, and if such
19 magisterial district has one holdover member on said board
20 only one member shall be elected as aforesaid; and if more
21 persons from a magisterial district receive the highest number
22 of votes in said election, then of such persons only the person
23 or persons having the highest vote who do not make the
24 aggregate number of elected members and holdover members
25 more than two from such magisterial district shall be de-
26 clared elected, and the remaining members shall be declared
27 from the highest from other magisterial districts; and in no
28 event shall any member be declared elected from the same
29 magisterial district wherein reside two already elected or other-
30 wise qualified members of such board who will continue to
31 hold office after the beginning of the term for which such
32 election was held.

33 It is declared to be the intent of this statute that any person
34 declared to be elected under the preceding provisions of the
35 section shall take office as a duly elected member or members,
36 even though he, she or they may not have received a majority
37 or plurality of all votes cast at such election.

38 In case of tie votes for county board of education member
39 candidates in any primary election, the provisions of section
40 twelve of article six of this chapter shall be invoked and shall
41 control in determination of the election.

§3-5-7. Filing announcements of candidacies; requirements; when section applicable.

1 Any person who is eligible to hold and seeks to hold an of-
2 fice (including that of member of any political party executive
3 committee) shall file with the secretary of state, if it be an office
4 to be filled by the voters of more than one county, or with
5 the clerk of the circuit court, if it be for an office to be

6 filled by the voters of a county or subdivision less than a
7 county, a certificate declaring himself a candidate for the
8 nomination for such office, which certificate shall be in form
9 or effect as follows:

10 I, _____, hereby certify that I am a
11 candidate for the nomination for the office of _____
12 to represent the _____ Party, and desire my name
13 printed on the official ballot of said party to be voted at
14 the primary election to be held on the _____ day
15 of _____, 19____; that I am a legally qualified
16 voter of the County of _____, State of West
17 Virginia; that my residence is number ____ of _____
18 Street in the City (or Town) of _____ in _____
19 County in said State; that I am eligible to hold the said
20 office; that I am a member of and affiliated with said
21 political party; that I am a candidate for said office in good
22 faith.

23

24

 Candidate

25 Signed and acknowledged before me this _____ day of
26 _____, 19_____.

27

28

29

 Signature and official title of
person before whom signed.

30 Any candidate for delegate to the national convention
31 of any political party shall provide, on a form prescribed
32 by the secretary of state, the information required in the
33 certificate hereinbefore described and shall also provide
34 the name of the person he prefers as the presidential nominee
35 of his party upon the first convention ballot, or if he has no
36 preference, a statement that he is uncommitted: *Provided*, That
37 any candidate for delegate may change his statement of presi-
38 dential preference by notifying the secretary of state by
39 registered letter, at least forty-five days prior to the day fixed
40 for the primary election.

41 Such announcement shall be signed and acknowledged by
42 the candidate before some officer qualified to administer oaths,

43 who shall certify the same. Any person who knowingly pro-
44 vides false information on said certificate shall be guilty of
45 an offense and shall be punished as set forth in section
46 twenty-three, article nine of this chapter.

47 Such certificate shall be filed with the secretary of state
48 or the clerk of the circuit court, as the case may be, not
49 earlier than the last Monday in February next preceding the
50 primary election day, and not later than the last Saturday of
51 March next preceding the primary election day, and must be
52 received before midnight, eastern standard time, of that day
53 or, if mailed, shall be postmarked before that hour.

54 The provisions of this section shall apply to the primary
55 election held in the year one thousand nine hundred eighty
56 and every primary election held thereafter.

§3-5-9. Certification and posting of candidacies.

1 During the week next following the last Saturday of March
2 next preceding the day fixed for the primary election, the
3 secretary of state shall arrange the names of all the candidates,
4 who have filed announcements with him, as provided in this
5 article, and who are entitled to have their names printed on
6 any political party ballot, in accordance with the provisions
7 of this chapter, and shall forthwith certify the same under his
8 name and the lesser seal of the state, and file the same in his
9 office.

10 Such certificate of candidates shall show (1) the name and
11 residence of each candidate, (2) the office for which he is a
12 candidate, (3) the name of the political party of which he is
13 a candidate, (4) upon what ballot his name is to be
14 printed and (5) in the case of a candidate for delegate to the
15 national convention of any political party, the name of the
16 person the candidate prefers as the presidential nominee of
17 his party, or if he has no preference, the word "uncommitted."

18 The secretary of state shall post a duplicate of such certifi-
19 cate in a conspicuous place in his office and keep same
20 posted until after the primary election.

21 Immediately upon completion of such certification, the

22 secretary of state shall ascertain therefrom the candidates
23 whose names are to appear on the primary election ballots in
24 the several counties of the state and shall certify to the clerk
25 of the circuit court in each county the certificate information
26 relating to each of the candidates whose names are to appear
27 on the ballot in such county. He shall transmit such certificate
28 to the several clerks by registered or certified mail, but, in
29 emergency cases, he may resort to other reliable and speedy
30 means of transmission which may be available so that such
31 certificates shall reach the several clerks by the thirtieth day
32 next preceding such primary election day.

33 The provisions of this section shall apply to the primary
34 election held in the year one thousand nine hundred eighty and
35 every primary election held thereafter.

§3-5-10. Publication and printing of ballots; number.

1 Between the thirtieth and the fifteenth days next prior to
2 the date of the primary election, the ballot commissioners of
3 each county shall prepare from the lists and certificates of
4 announcements, as provided in this article, a sample official
5 primary ballot for each party, placing thereon the names of all
6 the candidates of the political party, but in no case shall the
7 ballot contain any title, position, rank, degree, or such, in-
8 cluding but not limited to "doctor," "reverend," "PhD.," or the
9 equivalent, and, as the case may be, the nonpartisan candidates
10 to be voted for at such primary election. In the case of a can-
11 didate for delegate to the national convention of any political
12 party the ballot commissioners shall, in addition, include in the
13 ballot the name of the person the candidate prefers on the first
14 convention ballot as the presidential nominee of his party, or if
15 he has no preference the word "uncommitted." During the two
16 weeks next preceding the primary election they shall publish
17 such sample official primary election ballot as a Class II-O legal
18 advertisement in compliance with the provisions of article
19 three, chapter fifty-nine of this code, and the publication area
20 for such publication shall be the county. The second publica-
21 tion shall be on the last day upon which each newspaper is
22 published before the election.

23 The ballot commissioners shall determine the total number

24 of official ballots required for conducting the primary election
25 in all of the election precincts of the county and shall cause
26 same to be printed at least fifteen days next preceding the
27 date of the election and made ready for delivery to the several
28 precincts along with other election supplies. The number of
29 official ballots of a political party prepared for delivery to a
30 precinct shall not exceed one and one-twentieth times the num-
31 ber of registered voters of such party in that precinct.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-5. Rules and procedures in elections other than primaries.

1 The provisions of article one of this chapter relating to
2 elections generally shall govern and control arrangements
3 and election officials for the conduct of elections under
4 this article. The following rules and procedures shall govern
5 the voter in his voting for candidates in general and special
6 elections:

7 (a) If the voter desires to vote a straight ticket, or, in
8 other words, for each and every candidate for one party for
9 whatever office nominated, he shall either:

10 (1) Make a cross mark in the circular space below the
11 device and above the name of the party at the head of the
12 ticket; or

13 (2) Make a cross mark on the left and opposite the name
14 of each and every candidate of such party in the blank space
15 provided therefor; or

16 (3) Mark out, by lines, all the tickets on the ballot, other
17 than the ticket he desires to vote.

18 (b) If the voter desires to vote a mixed ticket, or in other
19 words, for candidates of different parties, he shall either:

20 (1) Omit making a cross in the circular space above the
21 name of the party, and make a cross mark in the blank space
22 before the name of each candidate for whom he desires to
23 vote on whatever ticket the name may be; or

24 (2) Make a cross mark in the circular space above the
25 name of the party for some of whose candidates he desires to

26 vote, and then make a cross mark before the name of any
27 candidate of any other party for whom he may desire to vote,
28 in which case the cross mark in the circular space above the
29 name of the party will cast his vote for every candidate on
30 the ticket of such party except for offices for which candidates
31 are marked on other party tickets, and the cross marks
32 before the name of such candidates will cast his vote for
33 them; or

34 (3) Write with black lead pencil or other means the
35 name of any person for whom he desires to vote in the space
36 immediately below the name of the opposing candidate for
37 the same office, on the ticket voted by him, and the name
38 so written shall be counted.

39 If, in marking either a straight or mixed ticket as above
40 defined, a cross mark is made in the circular space above
41 the name of a party at the head of the ticket, and also one
42 or more cross marks made before the name or names of
43 candidates on the same ticket for offices for which candidates
44 on other party tickets are not individually marked, such
45 marks before the name of candidates on the ticket so marked
46 shall be treated as surplusage and ignored.

47 If the voter desires to vote for any person whose name
48 does not appear on the ticket, he may substitute the name
49 by writing it with black lead pencil or other means in the
50 proper place, and making a cross mark in the blank space at
51 the left of the name so written. The use of stamps, stickers,
52 tapes, labels or any other means of writing in the name of
53 a candidate on the ticket shall be permitted in accordance
54 with rules and regulations prescribed by the secretary of state
55 for such manner of voting. The secretary of state may pro-
56 scribe devices which would cause mechanical difficulty with
57 voting machines or electronic devices or which would obliterate
58 or deface a paper ballot or any portion thereof, but the
59 secretary of state shall preserve the right to vote by a write-in
60 vote.

61 If the voter marks more names than there are persons to
62 be elected to an office, or if, for any reason, it is impossible
63 to determine the voter's choice, for an office to be filled,

64 the ballot shall not be counted for such office.

65 No ballot shall be rejected for any technical error which
66 does not make it impossible to determine the voter's choice.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules and regulations; additional powers of state election commission.

§3-8-12. Additional acts forbidden; circulation or written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-5. Detailed accounts and verified financial statements required.

1 Every candidate, financial agent, person and association
2 of persons, organization of any kind, including every corpora-
3 tion, directly or indirectly, supporting a political committee
4 established pursuant to paragraph (C), subdivision (1), sub-
5 section (b), section eight of this article or engaging in other
6 activities permitted by said section eight of this article and also
7 including the treasurer or equivalent officer of such association
8 or organization, advocating or opposing the nomination, elec-
9 tion or defeat of any candidate, or the passage or defeat of any
10 issue, thing or item to be voted upon, and the treasurer of every
11 political party committee shall keep detailed accounts of every
12 sum of money or other thing of value received by him, and of
13 all expenditures and disbursements made, liabilities incurred,
14 by such candidate, financial agent, person, association or or-
15 ganization or committee, for political purposes, or by any of the
16 officers or members of such committee, or any person acting
17 under its authority or on its behalf.

18 Each person who files a certificate of candidacy for nomi-
19 nation or election in this state as provided for in article five
20 of this chapter and every financial agent, person, the treasurer
21 or equivalent officer of any association or organization of any
22 kind supporting or opposing the candidacy of any such candi-
23 date, or any person or organization advocating or opposing the
24 nomination, election or defeat of any candidate, or the pas-
25 sage or defeat of any issue, thing or item to be voted upon,

26 shall, within fifteen days following the first Saturday of Feb-
27 ruary next preceding the primary election day, file a detailed
28 itemized statement, subscribed and sworn to before an officer
29 authorized to administer oaths, setting forth all contributions
30 and expenditures concerning the candidacy of that person or
31 any person or organization advocating or opposing the nomi-
32 nation, election or defeat of any candidate, or the passage or
33 defeat of any issue, thing or item to be voted upon. Such
34 statement shall include all contributions received or expendi-
35 tures made which have taken place by the date of such report,
36 subsequent to any previous report filed within the previous
37 five years under this section or under the former provisions of
38 this section, or if no report was filed, all contributions received
39 or expenditures made within the preceding five years. The
40 specific information required to be included in such statement
41 is provided for in section five-a of this article.

42 Not less than five nor more than ten days before each
43 primary or other election, and again within thirty days after
44 each primary or other election, every candidate for nomina-
45 tion or election, and every financial agent, person, the treasur-
46 er or equivalent officer of any association or organization of
47 any kind advocating or opposing the passage or defeat of any
48 issue, thing or item to be voted upon or pertaining to the
49 holding or conducting of any election, and the treasurer of
50 every political party committee shall file with the officers
51 hereinafter prescribed a detailed itemized financial statement
52 subscribed and sworn to before an officer authorized to
53 administer oaths, setting forth all financial transactions which
54 have taken place by the date of such report in connection
55 with such primary or other election as provided for in section
56 five-a of this article.

57 Every person who shall announce as a write-in candidate
58 for any elective office and his financial agent or election
59 organization of any kind, shall comply with all of the require-
60 ments of this section after public announcement of such
61 person's candidacy has been made.

§3-8-5a. Information required in financial statement.

1 Each financial statement as required by this article shall
2 show the following information:

3 (a) The first name, middle initial, if any, and last name,
4 residence and mailing address and telephone number of each
5 candidate, financial agent, treasurer or person, and the full
6 name, address and telephone number of each association,
7 organization or committee filing a financial statement.

8 (b) The balance of cash and any other sum of money on
9 hand at the beginning and the end of the period covered by
10 the financial statement.

11 (c) The first name, middle initial, if any, and the last
12 name in the case of an individual, and the full name of
13 each firm, association or committee, and the amount of such
14 contribution of such individual, firm, association or com-
15 mittee, and, if the aggregate of the sum or sums contributed
16 by any one such individual, firm, association or committee ex-
17 ceeds two hundred fifty dollars there shall also be reported
18 the residence and mailing address and, in the case of an
19 individual, the major business affiliation and occupation. A
20 contribution totaling more than fifty dollars by any one
21 contributor is prohibited unless it is by money order or by
22 check, and a violation of this provision is subject to section
23 five-d of this article. As used herein, the term "check" shall
24 have the meaning ascribed to that term in section one hundred
25 four, article three, chapter forty-six of this code.

26 (d) The total amount of contributions received during
27 the period covered by the financial statement.

28 (e) The first name, middle initial, if any, and the last
29 name, residence and mailing address in the case of an in-
30 dividual, or the full name and mailing address of each firm,
31 association or committee to whom each expenditure was
32 made or liability incurred, together with the amount and
33 purpose of each expenditure or liability incurred and the
34 date of each transaction.

35 When any lump sum payment is made to any advertising
36 agency or other disbursing person who does not file a report
37 of detailed accounts and verified financial statements as
38 required herein, such lump sum expenditures shall be ac-
39 counted for in the same manner as provided herein.

40 (f) The total expenditure for the nomination, election
41 or defeat of a candidate or any person or organization ad-

42 vocating or opposing the nomination, election or defeat of
43 any candidate, or the passage or defeat of any issue, thing
44 or item to be voted upon, in whose behalf an expenditure was
45 made or a contribution was given for the primary or other
46 election.

47 (g) The total amount of expenditures made during the
48 period covered by the financial statement.

49 (h) Any unexpended balance at the time of making the
50 financial statements herein provided for, shall be properly
51 accounted for in that financial statement and shall appear
52 as a balance in the next following financial statement.

53 (i) Each financial statement required by this section shall
54 contain a separate section setting forth the following infor-
55 mation for each fund-raising event held during the period
56 covered by the financial statement:

57 (1) The type of event, date held, and address and name, if
58 any, of the place where the event was held.

59 (2) All of the information required by subdivision (c) of
60 this section.

61 (3) The total of all moneys received at the fund-raising
62 event.

63 (4) The expenditures incident to the fund-raising event.

64 (5) The net receipts of the fund-raising event.

65 For the purpose of this section the term "fund-raising event"
66 means an event such as a dinner, reception, testimonial, cock-
67 tail party, auction or similar affair through which contributions
68 are solicited or received by such means as purchase of a tick-
69 et, payment of an attendance fee or through purchase of goods
70 or services.

71 (j) Any contribution or expenditure made by or on behalf
72 of a candidate for public office, to any other candidate, or
73 committee for a candidate for any public office in the same
74 election shall comply with the provisions of this article.

75 (k) No person, firm, association or committee shall make
76 any contribution except from his own funds, unless such

77 person, firm, association or committee discloses in writing to
78 the person required to report under this section the first name,
79 middle initial, if any, and the last name in the case of an indi-
80 vidual, or the full name in the case of a firm, association or
81 committee; residence and mailing address; the major business
82 affiliation and occupation of the person, firm, association or
83 committee which furnished the funds to such contributor. All
84 such disclosures shall be included in the statement required
85 by this section.

86 (l) Any firm, association, committee or fund permitted by
87 section eight of this article to be a political committee shall
88 disclose on the financial statement its corporate or other
89 affiliation.

**§3-8-8. Corporation contributions forbidden; exceptions; penalties;
promulgation of rules and regulations; additional powers
of state election commission.**

1 (a) No officer of any corporation, or agent or person on
2 behalf of such corporation, whether incorporated under the
3 laws of this or any other state, or foreign country, shall
4 pay, give or lend, or authorize to be paid, given or lent,
5 any money or other thing of value belonging to such cor-
6 poration, to any candidate, financial agent or political com-
7 mittee or other person, for the payment of any primary or
8 other election expenses whatever. No person shall solicit
9 or receive such payment, contribution or other thing from
10 any corporation, officer or agent thereof, or other person
11 acting on behalf of such corporation.

12 (b) (1) The provisions of this section shall not be deemed
13 to prohibit:

14 (A) Direct communications, other than by newspapers of
15 general circulation, radio, television or billboard advertising
16 likely to reach the general public, by a corporation to its
17 stockholders and executive or administrative personnel and
18 their families on any subject;

19 (B) Nonpartisan registration and get-out-the-vote cam-
20 paigns by a corporation aimed at its stockholders and exec-
21 utives or administrative personnel and their families; and

22 (C) The solicitation of contributions to a separate segre-

23 gated fund to be utilized for political purposes by any corporate
24 officer, agent or any person on behalf of a corporation. Any
25 such fund shall be deemed to be a political committee for the
26 purpose of this article and subject to all reporting requirements
27 thereof.

28 (2) It shall be unlawful:

29 (A) For such a fund to make a contribution or expenditure
30 by utilizing money or anything of value secured by physical
31 force, job discrimination, financial reprisal or the threat of
32 force, job discrimination or financial reprisal, or as a con-
33 dition of employment, or by moneys obtained in any com-
34 mercial transaction;

35 (B) For any person soliciting a stockholder, executive
36 or administrative personnel and members of their family
37 for a contribution to such fund to fail to inform such
38 person of the political purposes of such fund at the time
39 of such solicitation;

40 (C) For any person soliciting any other person for a con-
41 tribution to such a fund to fail to inform such other person
42 at the time of such solicitation of his right to refuse to so
43 contribute without any reprisal;

44 (D) For a corporation, or a separate segregated fund estab-
45 lished by a corporation to solicit contributions to such a
46 fund from any person other than its stockholders and their
47 families and its executive or administrative personnel and
48 their families or to contribute any corporate funds;

49 (E) For a corporation, or a separate segregated fund
50 established by a corporation to receive contributions to
51 such a fund from any person other than its stockholders and
52 their immediate families and its executive or administrative
53 personnel and their immediate families;

54 (F) For a corporation to engage in job discrimination or
55 to discriminate in job promotion or transfer because of an
56 employee's failure to make a contribution to such fund;

57 (G) For such a fund directly or indirectly to make
58 any contribution in excess of the value of one thousand

59 dollars in connection with any campaign for nomination
60 or election to or on behalf of any elective office in the
61 state or any of its subdivisions, or in connection with or
62 on behalf of any committee or other organization or person
63 engaged in furthering, advancing or advocating the nomina-
64 tion or election of any candidate for any such office; and

65 (H) For a corporation to pay, give or lend, or authorize
66 to be paid, given or lent, any moneys or other things of
67 value belonging to such corporation to such fund for any
68 purpose. This provision shall not be deemed to prohibit
69 such a fund from using the property, real or personal, facili-
70 ties, and equipment of a corporation solely to establish, ad-
71 minister, and solicit contributions to the fund, subject to the
72 rules and regulations of the state election commission as pro-
73 vided in subsection (d) of this section: *Provided*, That such
74 corporation shall also permit any group of employees thereof
75 represented by a bona fide political action committee to use
76 the real property of such corporation solely to establish, ad-
77 minister and solicit contributions to the fund of such political
78 action committee, subject to the rules and regulations of the
79 state elections commission as provided in subsection (d) of
80 this section. No such property, real or personal, facilities,
81 equipment, materials or services of a corporation shall be
82 utilized for the purpose of influencing any voter or voters to
83 vote for a particular candidate, or in any particular manner,
84 or upon any particular side of any question to be decided at
85 any election, or to influence the result of any such election.

86 (I) Public utility companies and railroad companies may
87 not form funds or political action committees in support of
88 political candidates or parties, and may not use corporate
89 property, real or personal, facilities, equipment, materials or
90 services of said utility to establish, administer or solicit con-
91 tributions to such fund or political action committee.

92 (3) For the purposes of this section, the term "executive
93 or administrative personnel" means individuals employed by
94 a corporation who are paid on a salary rather than hourly
95 basis and who have policy making, managerial, professional
96 or supervisory responsibilities.

97 (c) Any person or corporation violating any provision
98 of this section shall be guilty of a misdemeanor, and, on
99 conviction, shall be fined not more than five thousand dollars.
100 No corporation shall reimburse any person the amount of
101 any such fine imposed pursuant to this section.

102 (d) The state election commission shall promulgate rules
103 and regulations to implement the provisions of this section,
104 which rules and regulations, insofar as practicable, shall be
105 the same as the rules and regulations promulgated by the
106 Federal Election Commission to carry out those provisions of
107 2 USC § 441b which are similar or identical to those pro-
108 visions contained in this section in order that the provisions of
109 this section and the regulations promulgated thereunder and the
110 similar provisions of 2 USC § 441b and the regulations pro-
111 mulgated thereunder may be uniformly administered and ap-
112 plied to corporations subject to the cited section of the Federal
113 Election Campaign Act Amendments of 1976 and to this sec-
114 tion. The state election commission shall promulgate such rules
115 and regulations not later than sixty days after the effective
116 date of this subsection and in doing so shall be governed by the
117 provisions of article three, chapter twenty-nine-a of this code.

118 (e) In addition to its powers and duties as set forth in
119 article one-a of this chapter, the state election commission shall
120 have the following powers and duties:

121 1. To investigate, upon complaint or on its own initiative,
122 any alleged violations or irregularities of this article.

123 2. To administer oaths and affirmations, issue subpoenas
124 for the attendance of witnesses, issue subpoenas duces tecum
125 to compel the production of books, papers, records and all
126 other evidence necessary to any investigation.

127 3. To involve the aid of any circuit court in the execution
128 of its subpoena power.

129 4. To report any alleged violations of this article to the
130 appropriate prosecuting attorney having jurisdiction, which
131 prosecuting attorney shall present to the grand jury such
132 alleged violations, together with all evidence relating thereto,

133 no later than the next term of court after receiving the
134 report.

135 It shall be the duty of the attorney general to provide such
136 legal and investigative assistance to the state election com-
137 mission as it may request and require.

138 Any investigation either upon complaint or initiative, shall
139 be conducted in an executive session of the state election com-
140 mission and shall remain undisclosed except upon an indict-
141 ment by a grand jury.

142 Any person who shall disclose the fact of any complaint,
143 investigation or report or any part thereof, or any proceed-
144 ings thereon, shall be guilty of a misdemeanor, and, upon
145 conviction thereof, shall be fined not less than one thousand
146 dollars, nor more than five thousand dollars, and shall be
147 imprisoned in the county jail not less than six months nor
148 more than one year.

**§3-8-12. Additional acts forbidden; circulation of written matter;
newspaper advertising; solicitation of contributions; in-
timidation and coercion of employees; promise of em-
ployment or other benefits; limitations on contributions;
public contractors; penalty.**

1 (a) No person shall publish, issue or circulate, or cause to
2 be published, issued or circulated, any anonymous letter, cir-
3 cular, placard, or other publication tending to influence voting
4 at any election;

5 (b) No owner, publisher, editor or employee of a news-
6 paper or other periodical shall insert, either in its advertising
7 or reading columns, any matter, paid for or to be paid for,
8 which tends to influence the voting at any election whatever,
9 unless directly designating it as a paid advertisement and
10 stating the name of the person authorizing its publication and
11 the candidate in whose behalf it is published;

12 (c) No person shall, in any room or building occupied for
13 the discharge of official duties by any officer or employee of
14 the state or a political subdivision thereof, solicit orally or by
15 written communication delivered therein, or in any other man-
16 ner, any contribution of money or other thing of value for any

17 party or political purpose whatever, from any postmaster or
18 any other officer or employee of the federal government, or
19 officer or employee of the state, or a political subdivision
20 thereof. No officer, agent, clerk or employee of the federal
21 government, or of this state, or any political subdivision
22 thereof, who may have charge or control of any building,
23 office or room, occupied for any official purpose, shall know-
24 ingly permit any person to enter the same for the purpose of
25 therein soliciting or receiving any political assessments from,
26 or delivering or giving written solicitations for, or any notice of,
27 any political assessments to, any officer or employee of the
28 state, or a political subdivision thereof;

29 (d) Except as provided in section eight of this article no
30 person entering into any contract with the state or its sub-
31 divisions, or any department or agency thereof, either for
32 rendition of personal services or furnishing any material, sup-
33 plies or equipment or selling any land or building to the state,
34 or its subdivisions, or any department or agency thereof, if
35 payment for the performance of such contract or payment for
36 such material, supplies, equipment, land or building is to be
37 made in whole or in part from public funds shall, during the
38 period of negotiation for or performance under such contract
39 or furnishing of materials, supplies, equipment, land or build-
40 ings, directly or indirectly make any contribution to any polit-
41 ical party, committee or candidate for public office or to any
42 person for political purposes or use; nor shall any person or
43 firm solicit any contributions for any such purpose during any
44 such period;

45 (e) No person shall, directly or indirectly, promise any em-
46 ployment, position, work, compensation or other benefit pro-
47 vided for, or made possible, in whole or in part by act of the
48 Legislature, to any person as consideration, favor or reward for
49 any political activity for the support of or opposition to any
50 candidate, or any political party in any election;

51 (f) No person shall, directly or indirectly, make any contri-
52 bution in excess of the value of one thousand dollars in
53 connection with any campaign for nomination or election to
54 or on behalf of any statewide or national elective office, or in
55 excess of the value of one thousand dollars, in connection

56 with any other campaign for nomination or election to or on
57 behalf of any other elective office in the state or any of its
58 subdivisions, or in connection with or on behalf of any com-
59 mittee or other organization or person engaged in furthering,
60 advancing or advocating the nomination or election of any
61 candidate for any such office; and

62 (g) No person shall solicit any contribution from any non-
63 elective salaried employee of the state government or of any of
64 its subdivisions or coerce or intimidate any such employee into
65 making such contribution. No person shall coerce or intimi-
66 date any nonsalaried employee of the state government or any
67 of its subdivisions into engaging in any form of political ac-
68 tivity. The provisions hereof shall not be construed to pre-
69 vent any such employee from making such a contribution or
70 from engaging in political activity voluntarily, without coer-
71 cion, intimidation or solicitation.

72 Any person violating any provision of this section shall be
73 guilty of a misdemeanor, and, upon conviction thereof, shall be
74 fined not more than one thousand dollars, or confined in jail
75 for not more than one year, or, in the discretion of the court,
76 be subject to both such fine and imprisonment.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-13. Buying or selling vote unlawful; penalties.

§3-9-14. Unlawful acts by corporations; penalties.

§3-9-24. Limitations on prosecutions.

§3-9-13. Buying or selling vote unlawful; penalties.

1 (a) It is unlawful for any person to offer or to pay money
2 or any other thing of value to any person as consideration
3 for the vote of the offeree or payee, as the case may be, to
4 be cast for or against any candidate or issue in any election
5 held in the state. Any person who violates the provisions of
6 this subsection shall be guilty of a felony, and, upon conviction
7 thereof, shall be fined not less than five thousand dollars or
8 imprisoned for a period of not less than one year, nor more
9 than five years, or both.

10 (b) It is likewise unlawful for any person to accept or
11 agree to accept money or other thing of value as consideration
12 for the vote of the acceptee, to be cast for or against any

13 candidate or issue in any election held in the state. Any person
14 who violates the provisions of this subsection shall be guilty of
15 a misdemeanor, and, upon conviction thereof, shall be fined
16 not less than one hundred dollars nor more than one thousand
17 dollars or imprisoned in the county jail not more than one
18 year, or both.

§3-9-14. Unlawful acts by corporations; penalties.

1 Except as provided in section eight, article eight of this
2 chapter, any corporation which shall, by its officers, agents or
3 otherwise, offer, give or use, or cause to be offered, given
4 or used, or place or cause to be placed, in the possession,
5 under the control or at the disposal of another, to be offered,
6 given or used, directly or indirectly, money or other thing
7 of value, for the purpose of influencing any voter or voters
8 to vote for a particular candidate, or in any particular manner,
9 or upon any particular side of any question to be decided
10 at any such election, or to influence the result of any such
11 election, it shall be guilty of a misdemeanor, and, upon con-
12 viction thereof, shall be fined not less than five thousand nor
13 more than twenty thousand dollars for every such offense, at
14 the discretion of the jury.

§3-9-24. Limitations on prosecutions.

1 No person shall be prosecuted for any crime or offense
2 under any provision of this chapter, unless upon an indictment
3 found and presentment made within five years after the date
4 of the commission of the crime or offense.

CHAPTER 44

(Com. Sub. for H. B. 1563—By Mr. Speaker, Mr. Kopp)

[Passed March 10, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to

the office of emergency services and the general powers of the governor.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article five, 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 5. EMERGENCY SERVICES.

§15-5-1. Policy and purpose.

§15-5-2. Definitions.

§15-5-3. Office of emergency services.

§15-5-4. Emergency services advisory council.

§15-5-5. General powers of the governor.

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the
2 occurrence of disasters of unprecedented size and destructive-
3 ness, resulting from enemy attack, sabotage or other hostile
4 action, or from fire, flood, earthquakes or other natural
5 or man-made causes and in order to insure that prepara-
6 tions of this state will be adequate to deal with such disas-
7 ters, and generally to provide for the common defense and to
8 protect the public peace, health and safety and to preserve
9 the lives and property of the people of the state, it is hereby
10 found and declared to be necessary: (1) To create a state
11 emergency services agency and to authorize the creation of
12 local and regional organizations for emergency services in the
13 political subdivisions of the state; (2) to confer upon the
14 governor, and upon the executive heads of governing bodies
15 of the political subdivisions of the state the emergency powers
16 provided herein; and (3) to provide for the rendering of
17 mutual aid among the political subdivisions of the state and
18 with other states and to cooperate with the federal govern-
19 ment with respect to the carrying out of emergency service
20 functions.

21 It is further declared to be the purpose of this article and the
22 policy of the state that all emergency service functions of this
23 state be coordinated to the maximum extent with the com-
24 parable functions of the federal government including its

25 various departments and agencies, of other states and localities
26 and of private agencies of every type, so that the most effec-
27 tive preparation and use may be made of the nation's man-
28 power, resources and facilities for dealing with any disaster
29 that may occur.

§15-5-2. Definitions.

1 As used in this article:

2 (a) "Emergency services" means the preparation for and
3 the carrying out of all emergency functions, other than func-
4 tions for which military forces are primarily responsible, to
5 prevent, minimize and repair injury and damage resulting
6 from disasters caused by enemy attack, sabotage or other nat-
7 ural or other man-made causes. These functions include, with-
8 out limitation, fire-fighting services, police services, medical
9 and health services, communications, radiological, chemical
10 and other special weapons defense, evacuation of persons from
11 stricken areas, emergency welfare services, emergency trans-
12 portation, existing or properly assigned functions of plant pro-
13 tection, temporary restoration of public utility services and
14 other functions related to civilian protection, together with all
15 other activities necessary or incidental to the preparation for
16 and carrying out of the foregoing functions. Disaster includes
17 the imminent threat of disaster as well as its occurrence and
18 any power or authority exercisable on account of a disaster may
19 be exercised during the period when there is an imminent
20 threat thereof.

21 (b) "Local organization for emergency services" means an
22 organization created in accordance with the provisions of this
23 article by state or local authority to perform local emergency
24 service function.

25 (c) "Mobile support unit" means an organization for emer-
26 gency services created in accordance with the provisions of this
27 article by state or local authority to be dispatched by the gov-
28 ernor to supplement local organizations for emergency services
29 in a stricken area.

30 (d) "Political subdivision" means any county or municipal
31 corporation in this state.

§15-5-3. Office of emergency services.

1 There is hereby created within the office of the governor an
2 office to be known as the office of emergency services. A di-
3 rector of the office of emergency services, hereinafter called
4 the director, shall be appointed by the governor in accordance
5 with the provisions of section two-a, article seven, chapter six
6 of this code. On and after the effective date of this article,
7 the director of civil and defense mobilization referred to in
8 said section two-a shall be known and designated as the
9 director of emergency services.

10 The director may employ such technical, clerical, steno-
11 graphic and other personnel and fix their compensation and
12 may make such expenditures within the appropriation therefor
13 or from other funds made available to him for the purpose
14 of providing emergency services as may be necessary to carry
15 out the purpose of this article. Employees of the office of
16 emergency services shall be members of the state civil service
17 system and all appointments of the office, except those re-
18 quired by law to be exempt, shall be a part of the classified
19 service under the civil service system.

20 The director and other personnel of the office of emer-
21 gency services shall be provided with appropriate office space,
22 furniture, equipment, supplies, stationery and printing in the
23 same manner as provided for personnel of other state agencies.

24 The director, subject to the direction and control of the
25 governor, shall be executive head of the office of emergency
26 services and shall be responsible to the governor for carrying
27 out the program for emergency services in this state. He
28 shall coordinate the activities of all organizations for emer-
29 gency services within the state and maintain liaison with and
30 cooperate with emergency service and civil defense agencies
31 and organizations of other states and of the federal govern-
32 ment and shall have such additional authority, duties and
33 responsibilities authorized by this article as may be prescribed
34 by the governor.

35 The director shall have the power to acquire in the name
36 of the state by purchase, lease or gift, real property and rights
37 or easements necessary or convenient to construct thereon the

38 necessary building or buildings for housing an emergency
39 services control center.

40 The office of emergency planning in the department of
41 finance and administration is hereby abolished and its func-
42 tions, personnel and property transferred to the office of
43 emergency services. The department of civil and defense
44 mobilization is hereby abolished and its functions, personnel
45 and property transferred to the office of emergency services.

§15-5-4. Emergency services advisory council.

1 There is hereby created an emergency services advisory
2 council, hereinafter called the council, which shall consist of
3 seven members to be appointed by the governor. The council
4 shall advise the governor and the director on all matters per-
5 taining to emergency services. The governor shall serve as
6 chairman of the council and the members thereof shall serve
7 without compensation but shall be reimbursed for the rea-
8 sonable and necessary expenses actually incurred in the per-
9 formance of their duties.

§15-5-5. General powers of the governor.

1 The governor shall have general direction and control of the
2 office of emergency services and shall be responsible for the
3 carrying out of the provisions of this article and, in the event
4 of disaster beyond local control, may assume direct opera-
5 tional control over all or any part of the emergency service
6 functions within this state.

7 In performing his duties under this article, the governor is
8 authorized to cooperate with the federal government, other
9 states and private agencies in all matters pertaining to the
10 provision of emergency services for this state and the nation.

11 In performing his duties under this article to effect its
12 policy and purpose, the governor is further authorized and
13 empowered:

14 (1) To make, amend and rescind the necessary orders, rules
15 and regulations to carry out the provisions of this article within
16 the limits of the authority conferred upon him herein, with
17 due consideration of the plans of the federal government.

18 (2) To prepare a comprehensive plan and program for the
19 provision of emergency services in this state, such plan and
20 program to be integrated into and coordinated with compar-
21 able plans of the federal government and of other states to the
22 fullest possible extent, and to coordinate the preparation of
23 such plans and programs by the political subdivisions of this
24 state, such plans to be integrated into and coordinated with
25 the state plan and program to the fullest possible extent.

26 (3) In accordance with such state plan and program, to pro-
27 cure supplies and equipment, to institute training and public
28 information programs, to take all other preparatory steps in-
29 cluding the partial or full mobilization of emergency service
30 organizations in advance of actual disaster and to insure the
31 furnishing of adequately trained and equipped emergency ser-
32 vice personnel in time of need.

33 (4) To make such studies and surveys of industries, re-
34 sources and facilities in this state as may be necessary to
35 ascertain the capabilities of the state for providing emergency
36 services and to plan for the most efficient emergency use
37 thereof.

38 (5) On behalf of the state, to enter into mutual aid arrange-
39 ments with other states and to coordinate mutual aid plans be-
40 tween political subdivisions of this state.

41 (6) To delegate the administrative authority vested in him
42 under this article, to provide for the delegation or transfer or
43 both of the authority vested in the director under the provisions
44 of this article, to any other person as the governor in his
45 discretion may direct, and to provide for the subdelegation
46 of any such authority.

47 (7) To appoint, in cooperation with local authorities,
48 metropolitan area directors when practicable.

49 (8) To cooperate with the president and the heads of the
50 armed forces, the civil defense agency of the United States and
51 other appropriate federal officers and agencies and with the
52 officers and agencies of other states in matters pertaining to
53 the civil defense of the state and nation, including the direc-
54 tion and control of (a) blackouts and practice blackouts,

55 air raid drills, mobilization of emergency service and civil de-
56 fense forces and other tests and exercises; (b) warnings and
57 signals for drills or attacks and the mechanical devices to be
58 used in connection therewith; (c) the effective screening or
59 extinguishing of all lights and lighting devices and appliances;
60 (d) shutting off water mains, gas mains, electric power con-
61 nections and the suspension of all other utility services; (e) the
62 conduct of civilians and the movement and cessation of move-
63 ment of pedestrians and vehicular traffic during, prior and
64 subsequent to drills or attack; (f) public meetings or gather-
65 ings; and (g) the evacuation and reception of the civilian
66 population.

CHAPTER 45

(S. B. 253—By Mr. Sharpe)

[Passed March 4, 1978; in effect from passage.
Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section one-a, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of parking on state-owned property in Charleston; penalties; jurisdiction; removal of vehicles.

Be it enacted by the Legislature of West Virginia:

That section one-a, article four, 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 4. GENERAL SERVICES DIVISION.

§5A-4-1a. Regulation of parking on state-owned property in Charleston; penalties; jurisdiction.

1 The commissioner is vested with authority to regulate
2 parking of motor vehicles in accordance with the pro-
3 visions of this section with regard to the following state-
4 owned property in the city of Charleston, Kanawha
5 County:

6 (a) The east side of Greenbrier Street between Kana-
7 wha Boulevard and Washington Street, East;

8 (b) The west side of California Avenue between
9 Kanawha Boulevard and Washington Street, East;

10 (c) In the circle between the east and west wings of
11 the state capitol;

12 (d) Upon the state-owned grounds upon which state Of-
13 fice Building No. 3, 1800 Washington Street, East, is located;

14 (e) Upon the state-owned grounds upon which state
15 Office Building No. 4, 112 California Avenue, is located;

16 (f) In the state-owned parking garage at 212 California
17 Avenue and upon the state-owned grounds upon which
18 such parking garage is located;

19 (g) Upon the state-owned property at Michigan Avenue
20 and Virginia Terrace;

21 (h) Upon any other property now or hereafter owned
22 by the state and used for parking purposes in conjunction
23 with the state capitol or state Office Buildings Nos. 3 and
24 4.

25 The commissioner is authorized to promulgate rules and
26 regulations respecting parking and to allocate parking
27 spaces to public officers and employees of the state upon
28 all of the aforementioned property of the state: *Provided*,
29 That all parking spaces in the circle between the east and
30 west wings of the state capitol shall at all times be kept
31 available for parking by visitors at the capitol: *Provided*,
32 *however*, That during sessions of the Legislature parking
33 on the east side of Greenbrier Street between Kanawha
34 Boulevard and Washington Street, East, in the science and
35 culture center parking lot and in the circle between the
36 east and west wings of the capitol shall be subject to rules
37 and regulations promulgated jointly by the speaker of the
38 House of Delegates and the president of the Senate. Any
39 person parking any vehicle contrary to the rules and
40 regulations promulgated under authority of this section
41 shall be subject to a fine of not less than one dollar nor
42 more than twenty-five dollars for each offense. In addi-

43 tion, the commissioner or the Legislature, as the case may
44 be, may cause the removal at owner expense of any
45 vehicle that is parked in violation of such rules and regu-
46 lations. Magistrates in Kanawha County shall have juris-
47 diction of all such offenses.

48 The commissioner is authorized to employ such persons
49 as may be necessary to enforce the parking rules and
50 regulations promulgated under the provisions of this
51 section.

CHAPTER 46

(Com. Sub. for S. B. 365—By Mr. Dav's)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-a, all relating to the appointment of a state fire marshal and term of office, removal, salary, qualifications and responsibilities thereof; inspections and right of entry of the state fire marshal; investigations, arrests, warrants and penalties; providing for the deputizing of members of fire departments in this state; and providing for responsibilities of insurance companies in fire loss investigations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-11. Appointment of state fire marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

§29-3-12. Powers and duties of state fire marshal.

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

§29-3-11. Appointment of state fire marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

1 (a) The state fire commission shall appoint a state
2 fire marshal in accordance with the qualifications ap-
3 proved by the state civil service commission as provided
4 in article six, chapter twenty-nine of this code. He can
5 be removed by the commission at any time for neglect of
6 duty or other conduct unbecoming his office as provided
7 in article six, chapter twenty-nine of this code.

8 (b) The state fire marshal, within policy established
9 by the state fire commission, shall have all responsibility
10 for the implementation of fire safety programs in this
11 state designated to minimize fire hazards and disaster and
12 loss of life and property from these causes. These re-
13 sponsibilities include, but are not limited to, the establish-
14 ment and enforcement of fire safety practices throughout
15 the state, preventive inspection and correction activities,
16 coordination of fire safety programs with volunteer and
17 paid fire departments and critical analysis and evaluation
18 of West Virginia's fire loss statistics for determination of
19 problems and solutions.

20 (c) The state fire marshal may employ such technical,
21 clerical, stenographic and other personnel and fix their
22 compensation and may incur such expenses as may be
23 necessary in the performance of the duties of his office
24 within the appropriation therefor. Employees of the
25 fire marshal's office shall be members of the state civil
26 service system, and all appointments of the office shall be
27 a part of the classified service under the civil service
28 system.

29 Further, any individual who is employed to conduct
30 criminal investigations or who may become actively in-
31 volved in matters of a criminal nature shall first be re-

32 quired to pass a civil service examination testing his or
33 her competency and proficiency in the law of arrest, search
34 and seizure and other criminal procedures relating to the
35 powers granted to the state fire marshal pursuant to the
36 provisions of this article.

37 (d) The state fire marshal and other personnel of the
38 state fire marshal's office shall be provided with appro-
39 priate office space, furniture, equipment, supplies, sta-
40 tionery and printing in the same manner as provided for
41 other state agencies.

§29-3-12. Powers and duties of state fire marshal.

1 (a) *Enforcement of laws.*—The state fire marshal shall
2 enforce all laws of the state having to do with:

3 (1) Prevention of fire.

4 (2) The storage, sale and use of any explosive, com-
5 bustible or other dangerous article in solid, flammable
6 liquid or gas form.

7 (3) The installation and maintenance of equipment
8 of all sorts intended to extinguish, detect and control
9 fires.

10 (4) The means and adequacy of exit, in case of fire,
11 from buildings and all other places in which persons
12 work, live or congregate from time to time for any pur-
13 pose, except buildings used wholly as dwelling houses
14 for no more than two families.

15 (5) The suppression of arson.

16 (b) *Assistance upon request.*—Upon request, the state
17 fire marshal shall immediately assist any chief of any
18 recognized fire company or department.

19 (c) *Enforcement of regulations.*—The state fire marshal
20 shall enforce the regulations promulgated by the state
21 fire commission as authorized by section three of this
22 article.

23 (d) *Inspections generally.*—The state fire marshal
24 shall inspect all state, county and municipally owned
25 institutions, all public and private schools, theaters,

26 churches and other places of public assembly as to fire
27 exits and reasonable safety standards and report his
28 findings and recommendations to the proper adminis-
29 trative heads.

30 (e) *Right of entry.*—The state fire marshal may at all
31 reasonable hours enter any building or premises, other
32 than dwelling houses, for the purpose of making an in-
33 spection, which he may deem necessary to be made under
34 the provisions of this article.

35 (f) *Investigations.*—The state fire marshal may at any
36 time investigate as to the origin or circumstances of any
37 fire or explosion or attempt to cause fire or explosion
38 occurring in the state. The state fire marshal shall have
39 the authority at all times of the day or night, in per-
40 formance of the duties imposed by the provisions of this
41 article, to investigate where any fires or attempt to cause
42 fires shall have occurred, or which at the time may be
43 burning. Notwithstanding the above provisions of this
44 subsection, prior to entering any building or premises for
45 the purposes of such investigation, the state fire marshal
46 shall obtain a proper search warrant: *Provided*, That the
47 same shall not be necessary where there is permissive
48 waiver or the state fire marshal is an invitee of the
49 individual having legal custody and control of the prop-
50 erty, building or premises to be searched.

51 (g) *Testimony.*—The state fire marshal, in making an
52 inspection or investigation, when in his judgment such
53 proceedings are necessary, may take the statements or
54 testimony under oath of all persons who may be cognizant
55 of any facts or have any knowledge about the matter
56 to be examined and inquired into, and may have the
57 statements or testimony reduced to writing; and shall
58 transmit a copy of such statements or testimony so taken
59 to the prosecuting attorney for the county wherein the
60 fire or explosion or attempt to cause a fire or explosion
61 occurred. Notwithstanding the above, no person shall be
62 compelled to testify or give any such statement under
63 this subsection.

64 (h) *Arrests; warrants; penalty.*—When in their judg-

65 ment such examination as described in subsection (g)
66 of this section discloses that the fire or explosion or
67 attempt to cause a fire or explosion was of incendiary
68 origin, the state fire marshal, any full-time deputy fire
69 marshal, or any full-time assistant fire marshal are hereby
70 authorized and empowered:

71 (1) To arrest the supposed incendiary anywhere within
72 the confines of the state of West Virginia, or have him
73 arrested, for any violation of the provisions of this article
74 or of the arson-related offenses of article three, chapter,
75 sixty-one of this code: *Provided*, That any and all per-
76 sons so arrested shall be forthwith brought before the
77 magistrate or circuit court.

78 (2) To make complaint in writing before any court
79 or officer having jurisdiction and obtain, serve and ex-
80 ecute an arrest warrant when knowing or having rea-
81 son to believe that anyone has committed an offense
82 under any provision of this article or of the arson-related
83 offenses of article three, chapter sixty-one of this code.
84 Proper return shall be made on all arrest warrants be-
85 fore the tribunal having jurisdiction over such violation.

86 (3) To make complaint in writing before any court
87 or officer having jurisdiction and obtain, serve and ex-
88 ecute a warrant for the search of any premises that may
89 possess evidence or unlawful contraband relating to vio-
90 lations of this article or of the arson-related offenses
91 of article three, chapter sixty-one of this code. Proper
92 return shall be made on all search warrants before the
93 tribunal having jurisdiction over such violation.

94 (i) *Witnesses and oaths.*—The state fire marshal is em-
95 powered and authorized to issue subpoenas and subpoenas
96 duces tecum to compel the attendance of persons before
97 him to testify in relation to any matter which is, by
98 the provision of this article, a subject of inquiry and
99 investigation by the state fire marshal and cause to be
100 produced before him such papers as he may require in
101 making such examination. The state fire marshal is
102 hereby authorized to administer oaths and affirmations
103 to persons appearing as witnesses before him. False

104 swearing in any matter or proceeding aforesaid shall be
105 deemed perjury and shall be punishable as such.

106 (j) *Deputizing members of fire departments in this*
107 *state.*—The state fire marshal may deputize a member
108 of any fire department, duly organized and operating
109 in this state, who is approved by the chief of his depart-
110 ment and who is properly qualified, to act as his assistant
111 for the purpose of making inspections with the consent
112 of the property owner or the person in control of such
113 property and such investigations as may be directed by
114 the state fire marshal, and the carrying out of such orders
115 as may be prescribed by him, to enforce and make effec-
116 tive the provisions of this article and any and all regula-
117 tions promulgated by the state fire commission under
118 authority of this article.

119 (k) *Written report of examinations.*—The state fire
120 marshal shall, at the request of the county commission
121 of any county or the municipal authorities of any in-
122 corporated municipality in this state, make to them a
123 written report of the examination made by him regarding
124 any fire happening within their respective jurisdictions.

125 (l) *Report of losses by insurance companies.*—It shall
126 be the duty of each fire insurance company or associa-
127 tion doing business in this state, within ten days after
128 the adjustment of any loss sustained by it that exceeds
129 fifteen hundred dollars, to report to the state fire marshal,
130 upon forms furnished by him, such information regard-
131 ing the amount of insurance, the value of the property
132 insured and the amount of claim as adjusted, as in the
133 judgment of the state fire marshal it is necessary for
134 him to know. This report is in addition to any such
135 information required by the state insurance commissioner.
136 Upon the request of the owner or insurer of any property
137 destroyed or injured by fire or explosion, or in which
138 an attempt to cause a fire or explosion may have occurred,
139 the state fire marshal shall make a written report to the
140 person requesting the same of the result of the examina-
141 tion made by him regarding the property.

142 (m) *Issuance of permits and licenses.*—The state fire

143 marshal is authorized to issue permits and licenses as
144 required in this article.

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

1 (a) The fire marshal, any assistant fire marshal or
2 any investigator under the authority of the fire marshal
3 may request any insurance company investigating a fire
4 loss of real or personal property to release any informa-
5 tion in its possession relative to that loss. The company
6 shall release the information and cooperate with any
7 official authorized to request such information pursuant
8 to this section. The information shall include, but is not
9 limited to:

10 (1) Any policy in force;

11 (2) Any application for a policy;

12 (3) Premium payment records;

13 (4) History of previous claims;

14 (5) Material relating to the investigation of the loss,
15 including statements of any person, proof of loss and any
16 other relevant evidence.

17 (b) Any insurance company shall notify the fire
18 marshal, if it has reason to believe, based on its investiga-
19 tion of a fire loss to real or personal property, that the
20 fire was caused by other than accidental means. The
21 company shall furnish the fire marshal with pertinent
22 information acquired during its investigation and cooper-
23 ate with the courts and administrative agencies of the
24 state, and any official mentioned, or referred to, in sub-
25 section (a) of this section.

26 (c) In the absence of fraud, no insurance company or
27 person who furnishes information on its behalf, shall be
28 liable for any oral or written statement or any other
29 action necessary to supply information required pursuant
30 to this section.

31 (d) Any information furnished pursuant to this section

32 shall be held in confidence until such time as its release
33 may be required pursuant to a criminal proceeding.

34 (e) Any official mentioned, or referred to, in subsec-
35 tion (a) of this section may be required to testify as to
36 any information in his possession regarding the fire loss
37 of real or personal property in any civil action in which
38 any person seeks recovery under a policy against an
39 insurance company for the fire loss.

CHAPTER 47

(Com. Sub. for H. B. 1108—By Mrs. Withrow and Mr. Caudle)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and twenty-two, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto a new section, designated section twelve-b, all relating to manufacturers' responsibility for drug products, definitions, selection of generic drug products, written and oral orders required for prescription changes, substitution of generic name drug products generally, prohibition against limiting the making of a generic substitution, requirements as to method of selecting less expensive drug product, passing on savings to purchaser, notification to purchaser of substitution, interference with professional judgment of pharmacists prohibited, display of informational sign required, record of drug product substitutions to be maintained by pharmacists, minimum manufacturing standards required, board of pharmacy's responsibilities for promulgating regulations and enforcement of the provisions of this article, prescribing penalties for violation thereof, prescribing penalties for violation of article, and excepting board members from certain violations.

Be it enacted by the Legislature of West Virginia:

That sections twelve and twenty-two, article five, chapter thirty

of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five be further amended by adding thereto a new section, designated section twelve-b, all to read as follows:

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUG-STORES.

§30-5-12. Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription.

§30-5-12b. Definitions; selection of generic drug products.

§30-5-22. Offenses; penalties.

§30-5-12. Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription.

1 All persons, whether registered pharmacists or not, shall be
2 held responsible for the quality of all drugs, chemicals and
3 medicines they may sell or dispense, with the exception of
4 those sold in the original retail package of the manufacturer,
5 in which event the manufacturer shall be held responsible.

6 Except as provided in section twelve-b of this article, the
7 following acts shall be prohibited: (1) The falsification of any
8 label upon the immediate container, box and/or package
9 containing a drug; (2) the substitution or the dispensing of a
10 different drug in lieu of any drug prescribed in a prescription
11 without the approval of the practitioner authorizing the origi-
12 nal prescription: *Provided*, That this shall not be construed to
13 interfere with the art of prescription compounding as practiced
14 by the pharmacist in preparing more elegant preparations
15 which do not alter the therapeutic properties of the prescrip-
16 tion; (3) the filling or refilling of any prescription for a greater
17 quantity of any drug or drug product than that prescribed in
18 the original prescription without a written order or an oral
19 order reduced to writing, or the refilling of a prescription
20 without the verbal or written consent of the practitioner
21 authorizing the original prescription.

§30-5-12b. Definitions; selection of generic drug products.

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade name
3 selected by the manufacturer and placed upon a drug or drug

4 product, its container, label or wrapping at the time of
5 packaging.

6 (2) "Generic name" means the official title of a drug or
7 drug combination for which a new drug application, or an
8 abbreviated new drug application, has been approved by the
9 United States food and drug administration and is in effect.

10 (3) "Substitute" means to dispense without the prescriber's
11 express authorization a therapeutically equivalent generic
12 drug product in the place of the drug ordered or prescribed.

13 (4) "Equivalent" means drugs or drug products which are the
14 same amounts of identical active ingredients and same dosage
15 form, and which will provide essentially the same therapeutic
16 efficacy and toxicity when administered to an individual.

17 (5) "Practitioner" means a physician, osteopath, dentist,
18 veterinarian, podiatrist, optometrist or any other person duly
19 licensed to practice and to prescribe drugs under the laws
20 of this state.

21 (b) A pharmacist who receives a prescription for a brand
22 name drug or drug product shall substitute a less expensive
23 equivalent generic name drug or drug product unless in the
24 exercise of his professional judgment the pharmacist believes
25 that the less expensive drug is not suitable for the particular
26 patient: *Provided*, That no substitution may be made by the
27 pharmacist where the prescribing practitioner indicates that, in
28 his or her professional judgment, a specific brand name drug is
29 medically necessary for a particular patient. Every drug
30 prescription order shall contain an instruction on whether
31 or not an equivalent generic name drug or drug product may
32 be substituted.

33 If a written prescription is involved, the prescription or
34 chart order form shall have two signature lines at opposite
35 ends on the bottom of the form. Under the signature line
36 at the left side shall be clearly printed or written the words
37 "Brand Necessary" or words of similar purport which clearly
38 indicate the physicians' intent to prohibit substitution. Under
39 the signature line at the right side shall be clearly printed the
40 words "Generic Equivalent Permitted." A written prescription

41 order not in the form hereinabove prescribed shall be con-
42 strued as permitting the pharmacist to substitute an equivalent
43 generic name drug or drug product except where the prescrib-
44 ing practitioner has indicated in writing his intent that the
45 pharmacist not substitute an equivalent generic name drug
46 or drug product.

47 If an oral prescription order is involved, the prescribing
48 practitioner or his agent shall indicate to the pharmacist
49 whether or not an equivalent generic name drug or drug pro-
50 duct may be substituted. The pharmacist shall note the instruc-
51 tions on the file copy of the prescription or chart order form.

52 (c) No person may by trade rule, work rule, contract, or
53 in any other way prohibit, restrict, limit or attempt to pro-
54 hibit, restrict or limit the making of a generic name substitu-
55 tion under subsection (b) of this section. No employer or
56 his agent may use coercion or other means to interfere with
57 the professional judgment of the pharmacist in deciding
58 which generic name drugs or drug products shall be
59 stocked or substituted: *Provided*, That this section shall
60 not be construed to permit the pharmacist to generally refuse
61 to substitute less expensive therapeutically equivalent generic
62 drugs for brand name drugs, and that any pharmacist so
63 refusing shall be subject to the penalties prescribed in section
64 twenty-two, article five, chapter thirty of this code.

65 (d) A pharmacist may substitute a drug under subsection
66 (b) of this section only where there will be a savings to the
67 buyer. Where substitution is proper under subsection (b), or
68 where the physician prescribes the drug by generic name,
69 the pharmacist shall, consistent with his professional judg-
70 ment, dispense the lowest retail cost, effective brand which is
71 in stock.

72 (e) All savings in the retail price of the prescription shall
73 be passed on to the purchaser; these savings shall be equal
74 to the difference between the retail price of the brand name
75 product and the customary and usual price of the generic
76 product substituted therefor: *Provided*, That in no event shall
77 such savings be less than the difference in acquisition cost of
78 the brand name product prescribed and the acquisition cost of
79 the substituted product.

80 (f) Each pharmacy shall maintain a record of any sub-
81 stitution of an equivalent generic name drug product for a
82 prescribed brand name drug product on the file copy of a
83 written or oral prescription or chart order. Such record
84 shall include the manufacturer and generic name of the drug
85 product selected.

86 All drugs shall be labeled in accordance with the instruc-
87 tions of the practitioner.

88 Unless the physician directs otherwise, the prescription
89 label on all drugs dispensed by the pharmacist shall indicate
90 the generic name using abbreviations if necessary and the
91 name of the manufacturer. The same notation will be made
92 on the original prescription retained by the pharmacist.

93 (g) A pharmacist may not dispense a product under the
94 provisions of this section unless the manufacturer has shown
95 that the drug has been manufactured with the following
96 minimum good manufacturing standards and practices by:

97 (1) Labeling products with the name of the original manu-
98 facturer and control number;

99 (2) Maintaining quality control standards equal to or
100 greater than those of the United States food and drug ad-
101 ministration;

102 (3) Marking products with identification code or mono-
103 gram; and

104 (4) Labeling products with an expiration date.

105 (h) The West Virginia board of pharmacy shall establish
106 by rule a formulary of generic type and brand name drug
107 products which are determined by the board to demonstrate
108 significant biological or therapeutic inequivalence and which,
109 if substituted, would pose a threat to the health and safety of
110 patients receiving prescription medication. The formulary
111 shall be promulgated by the board within ninety days of the
112 date of passage of this section, and may be amended in ac-
113 cordance with the provisions of chapter twenty-nine-a of this
114 code.

115 (i) No pharmacist shall substitute a generic named thera-
116apeutically equivalent drug product for a prescribed brand
117 name drug product if the brand name drug product or the
118 generic drug type is listed on the formulary established by
119 the West Virginia board of pharmacy pursuant to this article,
120 or is found to be in violation of the requirements of the
121 United States food and drug administration.

122 (j) Any pharmacist who substitutes any drug shall, either
123 personally or through his agent, assistant or employee, notify
124 the person presenting the prescription of such substitution.
125 The person presenting the prescription shall have the right
126 to refuse the substitution. Upon request the pharmacist shall
127 relate the retail price difference between the brand name and
128 the drug substituted for it.

129 (k) Every pharmacy shall post in a prominent place that
130 is in clear and unobstructed public view, at or near the
131 place where prescriptions are dispensed, a sign which shall
132 read: "West Virginia law requires pharmacists to substitute
133 a less expensive generic named therapeutically equivalent drug
134 for a brand name drug, if available, unless you or your
135 physician direct otherwise." The sign shall be printed with
136 lettering of at least one and one-half inches in height with
137 appropriate margins and spacing as prescribed by the West
138 Virginia board of pharmacy.

139 (l) The West Virginia board of pharmacy shall promulgate
140 rules and regulations setting standards for substituted drug
141 products, obtaining compliance with the provisions of this
142 section and enforcing the provisions of this section. Any
143 person shall have the right to file a complaint with the
144 West Virginia board of pharmacy regarding any violation of
145 the provisions of this article. Such complaints shall be
146 investigated by the board of pharmacy.

147 Fifteen days after the board has notified, by registered mail,
148 a person, firm, corporation or copartnership that such person,
149 firm, corporation or copartnership is suspected of being in
150 violation of a provision of this section, the board shall hold
151 a hearing on the matter. If, as a result of the hearing, the
152 board determines that a person, firm, corporation or co-

153 partnership is violating any of the provisions of this section,
154 it may, in addition to any penalties prescribed by section
155 twenty-two of this article, suspend or revoke the permit of
156 any person, firm, corporation or copartnership to operate a
157 pharmacy or drugstore.

158 (m) No pharmacist complying with the provisions of this
159 section shall be liable in any way for the dispensing of a
160 generic named therapeutically equivalent drug, substituted
161 under the provisions of this section, unless the generic named
162 therapeutically equivalent drug was incorrectly substituted.

163 In no event where the pharmacist substitutes a drug for
164 the provisions of this section shall the prescribing physician
165 be liable in any action for loss, damage, injury or death of
166 any person occasioned by or arising from the use of the
167 substitute drug unless the original drug was incorrectly
168 prescribed.

169 Failure of a licensed physician to specify that a specific
170 brand name is necessary for a particular patient shall not
171 constitute evidence of negligence unless the physician had
172 reasonable cause to believe that the health of the patient
173 required the use of a certain product and no other.

174 (n) This section shall take effect on the first day of July,
175 one thousand nine hundred seventy-eight.

§30-5-22. Offenses; penalties.

1 Any person who shall violate any of the provisions of sec-
2 tion three of this article shall be guilty of a misdemeanor, and,
3 upon conviction thereof, shall for each offense, be fined not
4 exceeding two hundred dollars, or confined in the county
5 jail not to exceed six months, or both fined and imprisoned,
6 in the discretion of the court, and each day such violation
7 shall continue shall be deemed a separate offense.

8 Any person who violates any of the provisions of section
9 twelve shall be deemed guilty of a misdemeanor, and, upon
10 conviction thereof, shall be punished by a fine of not less
11 than fifty nor more than one hundred fifty dollars for each
12 such offense.

13 Any person, except for the board of pharmacy or member
14 thereof acting within the scope of his responsibilities or duties
15 as such member, who violates any of the provisions of section
16 twelve-b shall be deemed guilty of a misdemeanor, and, upon
17 conviction thereof, shall be punished by a fine of not less
18 than fifty nor more than one thousand dollars for each such
19 offense.

20 Any person, firm, partnership or corporation who shall
21 violate any of the provisions of section fourteen shall be
22 deemed guilty of a misdemeanor, and, upon conviction thereof,
23 for the first offense shall be fined not to exceed one hundred
24 dollars, or shall be imprisoned in the county jail not to
25 exceed six months, or both such fine and imprisonment, in
26 the discretion of the court, and each and every day that such
27 violation continues shall constitute a separate offense.

28 Any person, firm, partnership or corporation who shall
29 violate any of the provisions of section eighteen shall be
30 deemed guilty of a misdemeanor, and, upon conviction
31 thereof, shall be fined not to exceed fifty dollars for the first
32 offense, and upon conviction of a second offense shall be
33 fined not less than fifty nor more than five hundred dollars,
34 or shall be imprisoned in the county jail not to exceed
35 thirty days, or both such fine and imprisonment, in the
36 discretion of the court, and each and every day that such
37 violation continues shall constitute a separate offense.

CHAPTER 48

(S. B. 93—By Mr. Brotherton, Mr. President)

[Passed February 8, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen-a, relating to public health; state department of health; duties and powers of the director; provid-

ing that the director may designate in writing that a representative serve in his place on certain boards and commissions on which he is an ex officio member.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-14a. Director authorized to designate a representative to serve in his place on certain boards and commissions.

1 Notwithstanding any other provision of this code to the
2 contrary, the director may, at his discretion, designate in
3 writing a representative to serve in his stead at the meet-
4 ings and in the duties of all boards and commissions on
5 which the director is designated as a member ex officio.
6 Such appropriately designated representative or proxy
7 may act with the full power and authority of the director
8 in voting, acting upon matters concerning the public
9 health and welfare and such other business as may prop-
10 erly be the duty of any such said board or commission,
11 with any such representative serving as proxy for the
12 director at his will and pleasure: *Provided*, That the pro-
13 visions of this section shall not apply to the state board of
14 health, the medical licensing board, the air pollution con-
15 trol commission or any other board, commission or body
16 on which the director is designated by this code as chair-
17 man ex officio, secretary ex officio or any board, commis-
18 sion or body on which the director is designated by this
19 code as being that person whose signature must appear on
20 licenses, minutes or other documents necessary to carry
21 out the intents and purposes of said board, commission or
22 body.

CHAPTER 49

(Com. Sub. for H. B. 739—By Mr. Harman and Mr. Teets)

[Passed January 25, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to issuance of a new certificate of birth for children born in a country other than the United States upon adoption in this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. VITAL STATISTICS.

§16-5-18a. Record of foreign birth in adoption cases.

1 When it appears from a certificate of adoption, transmitted
2 to the state registrar of vital statistics as provided for in sec-
3 tion sixteen of this article, that the child was born outside of
4 the United States or its territories, then upon submission to
5 the state registrar of vital statistics of evidence as to the child's
6 birthdate and birthplace provided by the original birth certif-
7 icate, or a certified copy, extract, or translation thereof or by
8 any other essentially equivalent document including, but not
9 limited to, the records of the United States immigration and
10 naturalization service or of the United State's department of
11 state, the state registrar of vital statistics shall make and file
12 a new birth certificate for the child. The new birth certificate
13 shall include the actual place and date of birth, the child's
14 name and parentage as ordered in the decree of adoption and
15 any other necessary facts as required by the state registrar.

CHAPTER 50

(S. B. 369—By Mr. Rogers)

[Passed March 9, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article twenty-two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the establishment of hypothyroid testing facilities and procedures for newborn infants by the state health department.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article twenty-two, 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 22. DETECTION AND CONTROL OF PHENYLKETONURIA
AND HYPOTHYROIDISM IN NEWBORN CHILDREN.**

§16-22-1. Findings.

§16-22-2. Program to combat mental retardation; rules and regulations; facilities for making tests.

§16-22-3. Tests for phenylketonuria and hypothyroidism; reports; assistance to afflicted children.

§16-22-4. Penalties for violating provisions of article.

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria and hypo-
2 thyroidism, genetic defects affecting body metabolism,
3 are usually associated with mental retardation. Labora-
4 tory tests are readily available to aid in the detection of
5 these diseases and the hazards to health of those suffering
6 thereof may be lessened or prevented by early detection
7 and treatment. Damage from these diseases, if untreated
8 in the early months of life, is usually rapid and not ap-
9 preciably affected by treatment.

**§16-22-2. Program to combat mental retardation; rules and
regulations; facilities for making tests.**

1 The state department of health is hereby authorized to
2 establish and carry out a program designed to combat

3 mental retardation in our state's population due to
4 phenylketonuria and hypothyroidism, and may adopt
5 reasonable rules and regulations necessary to carry out
6 such a program. The department of health shall establish
7 and maintain facilities at its state hygienic laboratory for
8 testing specimens for the detection of phenylketonuria
9 and hypothyroidism. Tests shall be made by such labora-
10 tory of specimens upon request by physicians, hospital
11 medical personnel and other individuals attending new-
12 born infants. The state department of health is authorized
13 to establish additional laboratories throughout the state
14 to perform tests for the detection of phenylketonuria
15 and hypothyroidism.

**§16-22-3. Tests for phenylketonuria and hypothyroidism; re-
ports; assistance to afflicted children.**

1 The physician attending a newborn child or any person
2 attending a newborn child not under the care of a phy-
3 sician shall cause to be made a test for phenylketonuria
4 and hypothyroidism approved by the state department
5 of health. Any test found positive for phenylketonuria
6 or hypothyroidism shall be promptly reported to the
7 state department of health by the director of the labora-
8 tory performing such test.

9 The state department of health, in cooperation with
10 other state departments and agencies, and with attending
11 physicians, is authorized to provide medical, dietary and
12 related assistance to children determined to be afflicted
13 with phenylketonuria or hypothyroidism.

§16-22-4. Penalties for violating provisions of article.

1 Any person violating the provisions of this article
2 shall be guilty of a misdemeanor, and, upon conviction
3 thereof, shall be fined not less than twenty-five nor more
4 than fifty dollars. Violation of each such provision shall
5 be considered a separate offense.

CHAPTER 51

(S. B. 529—Originating in the Committee on Health)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the director of health to establish mobile testing facilities in certain areas of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. DETECTION OF TUBERCULOSIS, HIGH BLOOD PRESSURE AND DIABETES.

§16-25-4. Program for detection of high blood pressure and diabetes; mobile testing facilities.

1 The state director of health is hereby authorized to
2 establish and implement programs for early detection of
3 diseases as the director may determine, including, but
4 not limited to, high blood pressure, diabetes, and if possi-
5 ble, water testing. The board of health may promulgate
6 reasonable rules and regulations necessary to carry out
7 such programs. To this end, the director is hereby autho-
8 rized to convert and utilize any mobile testing facilities
9 presently within the department of health for such pro-
10 grams and in such areas of this state as the director may
11 determine. The director may establish and maintain ade-
12 quate testing facilities for the detection of such diseases
13 in state hygienic laboratories and water testing facilities
14 as the director finds is necessary to carry out the legisla-
15 tive purpose as is defined in section one of this article.

CHAPTER 52

(S. B. 6—By Mr. Tonkovich and Mr. Neeley)

[Passed February 3, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conduct of proceedings of the West Virginia resource recovery-solid waste disposal authority.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article twenty-six, 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 26. WEST VIRGINIA RESOURCE RECOVERY—SOLID WASTE DISPOSAL AUTHORITY.

§16-26-22. Conduct of proceedings of authority.

- 1 The authority shall comply with all of the requirements
- 2 in article nine-a, chapter six of this code.

CHAPTER 53

(Com. Sub. for H. B. 1697—By Mr. Speaker, Mr. Kopp)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended relating to the license tax on horse and dog racetracks; providing that such taxes be in lieu of all other state, county or municipal taxes; providing for certain exceptions with respect to certain municipal taxes; and extending the provisions of said section to horse owners, trainers, jockeys or other persons whose services are directly essential to the effective conduct of a horse or dog racing meeting.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12. License to be in lieu of all other license, etc., taxes; exception.

1 The license tax imposed in section ten of this article shall
2 be in lieu of all other license, income, excise, special or fran-
3 chise taxes of this state, and no county or municipality or
4 other political subdivision of this state shall be empowered to
5 levy or impose any license, income, pari-mutuel, excise, special
6 or franchise tax on any racing association engaged in the
7 business of conducting a horse or dog race meeting at which
8 horse or dog races are run for purses under the jurisdiction of
9 and being licensed by the racing commission, or on the opera-
10 tion or maintenance of the pari-mutuel system of wagering, or
11 on the sale of any commodity during a horse or dog race
12 meeting at which horse or dog races are run, or at any such
13 horse or dog racetrack nor shall there be, hereafter, any im-
14 position of tax pursuant to articles twelve, thirteen or fifteen
15 of chapter eleven of this code on the income or receipts of
16 owners, trainers or jockeys directly arising from their
17 services which are essential to the effective conduct of a
18 horse or dog racing meeting: *Provided*, That the foregoing
19 provisions of this section shall in no way affect, abridge or
20 abolish the authority of a municipality to impose the license
21 tax authorized by the provisions of section eight, article thir-
22 teen, chapter eight of this code.

CHAPTER 54

(H. B. 919—By Mr. Laulis)

[Passed March 8, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article six, chapter thirty-three of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, relating to the value of a motor vehicle for insurance purposes; inclusion of state excise tax in value.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, article six, 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 6. THE INSURANCE POLICY.

§33-6-33. Value of motor vehicle involved in claim.

1 Insurance companies doing business in this state shall use
2 the most recent publication of an "official used car guide"
3 approved by the insurance commissioner as a guide for setting
4 the minimum value of any motor vehicle involved in a claim
5 settlement arising from a motor vehicle accident. In addition
6 to any cash settlement value so agreed to by the claimant,
7 there shall be added an amount equal to five percent of such
8 cash settlement value so established as reimbursement to
9 the claimant for the excise tax imposed under section four,
10 article three, chapter seventeen-a of the code of West Virginia.

CHAPTER 55

(S. B. 173—By Mr. Rogers, Mr. Hinkle and Mr. McGraw)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section four, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to automobile liability insurance policies and the effect of non-renewal of a policy which has been in effect for two consecutive years or longer.

Be it enacted by the Legislature of West Virginia:

That section four, article six-a, 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 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; when nonrenewal constitutes cancellation.

1 No insurer shall fail to renew an outstanding automobile
2 liability insurance policy unless such nonrenewal is pre-
3 ceded by at least forty-five days of advance notice to the
4 named insured of such insurer's election not to renew such
5 policy: *Provided*, That subject to this section, nothing
6 contained in this article shall be construed so as to
7 prevent an insurer from refusing to issue an automobile
8 liability policy upon application to such insurer, nor shall
9 any provision of this article be construed to prevent an
10 insurer from refusing to renew such a policy upon ex-
11 piration, except as to the notice requirements of this
12 section, and except further as to those applicants law-
13 fully submitted pursuant to the West Virginia assigned
14 risk plan: *Provided, however*, That the failure by an
15 insurer to renew an outstanding automobile liability
16 insurance policy which has been in existence for two
17 consecutive years or longer constitutes a cancellation
18 of such policy and is subject to hearing and review as
19 provided by section five of this article.

CHAPTER 56

(S. B. 377—By Mr. Neeley)

[Passed March 4, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-six, relating to insolvent insurance companies; the West Virginia insurance guaranty association;

establishing a priority of certain claims to be allowed by receivership courts so as to make policyholders, beneficiaries, insureds and the West Virginia guaranty association preferred creditors; and immediate access to the assets of an insolvent insurer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-36. Creating preference among creditors; disbursement of assets.

1 (a) Upon the issuance of a proper court order placing
2 a domestic insurer in receivership or placing a foreign
3 insurer in ancillary receivership for rehabilitation or
4 liquidation, pursuant to this article, all policyholders,
5 beneficiaries and insureds of such insurer, and the West
6 Virginia insurance guaranty association, shall be pre-
7 ferred creditors of said insurer with respect to claims
8 arising from and within the coverages of and not in
9 excess of the applicable limits of insurance policies and
10 contracts issued by the company, liability claims against
11 insureds which claims are within the coverage of and
12 not in excess of the applicable limits of insurance policies
13 and insurance contracts issued by the company, and
14 claims of the West Virginia insurance guaranty associa-
15 tion and any similar organization in another state. With
16 the exception of costs of administration of said receiver-
17 ship, liens, judgments obtained prior to initiation of
18 delinquency proceedings, and secured creditors claims,
19 no claim of a general creditor shall be preferred over
20 that of a policyholder, beneficiary and insured of an
21 insurer in receivership or that of the West Virginia in-
22 surance guaranty association.

23 (b) (1) Within one hundred twenty days of a final
24 determination of insolvency of an insurance company
25 by the circuit court, the commissioner shall make ap-

26 plication to the court for approval of a proposal to dis-
27 perse assets out of such company's marshaled assets,
28 from time to time as such assets become available, to
29 the West Virginia insurance guaranty association includ-
30 ing any assets received from any entity or person per-
31 forming a similar function in another state. The West
32 Virginia insurance guaranty association and any entity or
33 person performing a similar function in other states shall
34 hereinafter be referred to collectively as the associations.

35 (2) Such proposal shall at least include provisions
36 for:

37 (A) Reserving amounts for the payment of expenses
38 of administration and of claims falling within the
39 priorities established in the Uniform Insurers Liquidation
40 Act but only with respect to such priorities higher
41 than that of the associations;

42 (B) Disbursement of the assets marshaled to date
43 and subsequent disbursement of assets as they become
44 available;

45 (C) Equitable allocation of disbursements to each of
46 the associations entitled thereto;

47 (D) The securing by the commissioner from each of
48 the associations entitled to disbursements pursuant to
49 this section of an agreement to return to the commis-
50 sioner such assets previously disbursed as may be re-
51 quired to pay claims of secured creditors and claims
52 falling within the priorities established in section twenty-
53 seven of this article. No bond shall be required of any such
54 association; and

55 (E) A full report to be made by the association to
56 the commissioner accounting for all assets so dispersed
57 to the association, all disbursements made therefrom,
58 any interest earned by the association on such assets
59 and any other matter as the court may direct.

60 (3) The commissioner's proposal shall provide for
61 disbursements to the associations in amounts estimated
62 at least equal to the claim payments made or to be
63 made thereby for which such associations could assert

64 a claim against the commissioner, and shall further
65 provide that if the assets available for disbursement from
66 time to time do not equal or exceed the amount of such
67 claim payments made or to be made by the association,
68 then disbursements shall be in the amount of available
69 assets.

70 (4) Notice of such application shall be given to the
71 associations in and to the commissioners of insurance
72 of each of the states. Any such notice shall be deemed
73 to have been given when deposited in the United States
74 mail, first class postage prepaid, at least thirty days
75 prior to submission of such application to the court.
76 Action on the application may be taken by the court
77 provided the above required notice has been given and
78 provided that the commissioner's proposal complies with
79 paragraphs (A) and (B), subdivision (2) hereof.

CHAPTER 57

(H. B. 1225—By Mr. Morasco)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-a, relating to issuance of conversion policies when group insurance coverage terminated; required provisions; persons covered; alternative plans of insurance coverage.

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 sixteen-a, to read as follows:

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.

- §33-16A-1. Right of insured to convert from group coverage.
§33-16A-2. Issuance of converted policy.
§33-16A-3. Effective date of policy.

- §33-16A-4. Coverage of dependents.
- §33-16A-5. Persons for whom coverage not required.
- §33-16A-6. Inquiries by insurer.
- §33-16A-7. Limits of coverage.
- §33-16A-8. Preexisting conditions; reduction of benefits.
- §33-16A-9. Alternate plans of conversion coverage.
- §33-16A-10. Additional coverage.
- §33-16A-11. Combined policy coverage.
- §33-16A-12. Coverage following retirement.
- §33-16A-13. Other conversion privileges.
- §33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.

§33-16A-1. Right of insured to convert from group coverage.

1 A group policy or group subscriber contract which provides
2 hospital, surgical or major medical expense insurance, or any
3 combination of these coverages, on an expense incurred basis,
4 but not a policy which provides benefits for specific diseases
5 or for accidental injuries only, shall provide that an employee
6 or member whose insurance under the group policy or contract
7 has been terminated for any reason, including discontinuance
8 of the group policy in its entirety or of an insured class, who
9 has been continuously insured under the group policy, or under
10 any group policy providing similar benefits which it replaces,
11 for at least three months immediately prior to termination, shall
12 be entitled to have issued to him by the insurer a converted
13 policy of health insurance. An employee or member shall not
14 be entitled to have a converted policy issued to him if termi-
15 nation of his insurance under the group policy occurred be-
16 cause he failed to pay any required contribution, or the dis-
17 continued group coverage was replaced by similar group cov-
18 erage within thirty-one days.

§33-16A-2. Issuance of converted policy.

1 Issuance of a converted policy shall be subject to the fol-
2 lowing conditions:

3 (a) Written application for the converted policy shall be
4 made and the first premium paid to the insurer not later than
5 thirty-one days after termination of the group policy or con-
6 tract.

7 (b) The converted policy shall be issued without evidence
8 of insurability.

9 (c) The initial premium for the converted policy for the
10 first twelve months and subsequent renewal premiums shall
11 be determined in accordance with premium rates applicable
12 to individually underwritten standard risks, to the age and
13 class of risk of each person to be covered under the con-
14 verted policy and to the type and amount of insurance pro-
15 vided. The experience under converted policies shall not be an
16 acceptable basis for establishing rates for converted policies.

17 If an insurer experiences or incurs losses for a period of
18 two years on conversion policies which exceed earned pre-
19 miums by more than twenty percent, the insurer may file with
20 the commissioner amended renewal rates for the subsequent
21 year, which will produce a loss ratio of not less than one
22 hundred twenty percent.

23 Conditions pertaining to health shall not be an acceptable
24 basis for classification for the purposes of this section. The
25 frequency of premium payment shall be the frequency cus-
26 tomarily required by the insurer for the policy form and plan
27 selected: *Provided*, That the insurer shall not require premium
28 payments less frequently than quarterly.

§33-16A-3. Effective date of policy.

1 The effective date of the converted policy shall be the
2 day following the termination of insurance under the group
3 policy.

§33-16A-4. Coverage of dependents.

1 The converted policy shall cover the employ~~ee~~ or member
2 and his dependents who were covered by the group policy on
3 the date of termination of insurance. At the option of the
4 insurer, a separate converted policy may be issued to cover
5 any dependent.

§33-16A-5. Persons for whom coverage not required.

1 The insurer shall not be required to issue a converted policy
2 covering any person if such person is or could be covered by
3 medicare (Title XVIII of the United States Social Security
4 Act as supplemented by the Social Security Amendments of
5 1965 or as later amended or superseded). Furthermore, the

6 insurer shall not be required to issue a converted policy cov-
7 ering any person if:

8 (a) (1) Such person is covered for similar benefits by
9 another hospital, surgical, medical or major medical expense
10 insurance policy or hospital or medical service subscriber con-
11 tract or medical practice or other prepayment plan or by any
12 other plan or program; or

13 (2) Similar benefits are provided to such person, pursuant
14 to or in accordance with the requirements of any state or
15 federal law; and

16 (b) The benefits provided under the sources referred to in
17 (1) above for such person or benefits provided under the
18 sources referred to in (2) above for such person, together
19 with the benefits provided by the converted policy, would
20 result in overinsurance according to the insurer's standards.
21 The insurer's standards must bear some reasonable rela-
22 tionship to actual health care costs in the area in which
23 the insured lives at the time of conversion and must be filed
24 with the commissioner prior to their use in denying coverage.

§33-16A-6. Inquiries by insurer.

1 A converted policy may include a provision whereby the
2 insurer may request information in advance of any premium
3 due date of such policy of any person covered thereunder as
4 to whether (i) he is covered for similar benefits by another
5 hospital, surgical, medical or major medical expense insurance
6 policy or hospital or medical service subscriber contract or
7 medical practice or other prepayment plan or by any other
8 plan or program, (ii) he is covered for similar benefits under
9 any arrangement of coverage for individuals in a group, wheth-
10 er on an insured or uninsured basis, or (iii) similar benefits
11 are provided for or available to such person, pursuant to or
12 in accordance with the requirements of any state or federal
13 law. The converted policy may provide that the insurer may
14 refuse to renew the policy or the coverage of any person
15 insured thereunder for the following reasons only:

16 (a) Either the benefits provided under the sources referred
17 to in (i) and (ii) above for such person or benefits provided

18 or available under the sources referred to in (iii) above for
19 such person, together with the benefits provided by the con-
20 verted policy, would result in overinsurance according to the
21 insurer's standards on file with the commissioner or the con-
22 verted policyholder fails to provide the requested information;

23 (b) Fraud or material misrepresentation in applying for
24 any benefits under the converted policy;

25 (c) Eligibility of the insured person for coverage under
26 medicare (Title XVIII of the United States Social Security
27 Act as supplemented by the Social Security Amendments of
28 1965 or as later amended or superseded) or under any other
29 state or federal law providing for benefits similar to those
30 provided by the converted policy;

31 (d) Other reasons approved by the commissioner.

§33-16A-7. Limits of coverage.

1 An insurer shall not be required to issue a converted
2 policy which provides benefits in excess of those provided
3 under the group policy from which conversion is made.

§33-16A-8. Preexisting conditions; reduction of benefits.

1 The converted policy shall not exclude a preexisting con-
2 dition not excluded by the group policy. However, the con-
3 verted policy may provide that any hospital, surgical or medi-
4 cal benefits payable thereunder may be reduced by the amount
5 of any such benefits payable under the group policy after the
6 termination of the individual's insurance thereunder. The con-
7 verted policy may also include provisions so that during the
8 first policy year the benefits payable under the converted
9 policy, together with the benefits payable under the group
10 policy, shall not exceed those that would have been payable
11 had the individual's insurance under the group policy re-
12 mained in force and effect.

§33-16A-9. Alternate plans of conversion coverage.

1 If the group insurance policy from which conversion is
2 made insures the employee or member for basic hospital or
3 surgical expense insurance, the employee or member shall be
4 entitled to obtain a converted policy providing, at his option,

5 coverage on an expense incurred basis under any one of the
6 plans meeting the following requirements:

7 **Plan A**

8 (a) Hospital room and board daily expense benefits in a
9 maximum dollar amount approximating the average semi-
10 private rate charged in metropolitan areas of this state, for a
11 maximum duration of seventy days;

12 (b) Miscellaneous hospital expense benefits of a maximum
13 amount of ten times the hospital room and board daily ex-
14 pense benefits; and

15 (c) Surgical operation expense benefits according to a surgi-
16 cal schedule consistent with those customarily offered by the
17 insurer under group or individual health insurance policies
18 and providing a maximum benefit of eight hundred dollars; or

19 **Plan B**

20 (a) Hospital room and board daily expense benefits in a
21 maximum dollar amount equal to seventy-five percent of the
22 maximum dollar amount determined for Plan A, for a maxi-
23 mum duration of seventy days;

24 (b) Miscellaneous hospital expense benefits of a maximum
25 amount of ten times the hospital room and board daily ex-
26 pense benefits; and

27 (c) Surgical operation expense benefits according to a surgi-
28 cal schedule consistent with those customarily offered by the
29 insurer under group or individual health insurance policies
30 and providing a maximum benefit of six hundred dollars; or

31 **Plan C**

32 (a) Hospital room and board daily expense benefits in a
33 maximum dollar amount equal to fifty percent of the maximum
34 dollar amount determined for Plan A, for a maximum duration
35 of seventy days;

36 (b) Miscellaneous hospital benefits of a maximum amount
37 of ten times the hospital room and board daily expense bene-
38 fits; and

39 (c) Surgical operation expense benefits according to a

40 surgical schedule consistent with those customarily offered by
41 the insurer under group or individual health insurance policies
42 and providing a maximum benefit of four hundred dollars.

43 The maximum dollar amounts in Plan A shall be deter-
44 mined by the commissioner and may be redetermined by him
45 from time to time as to converted policies issued subsequent
46 to such redetermination. Such redetermination shall not be
47 made more often than once in three years. The maximum
48 dollar amounts in Plans A, B and C shall be rounded to the
49 nearest multiple of ten dollars.

§33-16A-10. Additional coverage.

1 If the group insurance policy from which conversion is
2 made insures the employee or member for major medical ex-
3 pense insurance, the employee or member shall be entitled to
4 obtain a converted policy providing catastrophic or major
5 medical coverage under a plan meeting the following require-
6 ments:

7 (a) A maximum benefit at least equal to either, at the
8 option of the insurer, (1) or (2) below:

9 (1) The smaller of the following amounts:

10 (A) The maximum benefit provided under the group policy.

11 (B) A maximum payment of two hundred fifty thousand
12 dollars per covered person for all covered medical expenses
13 incurred during the covered person's lifetime.

14 (2) The smaller of the following amounts:

15 (A) The maximum benefit provided under the group policy.

16 (B) A maximum payment of two hundred fifty thousand
17 dollars for each unrelated injury or sickness.

18 (b) Payment of benefits at the rate of eighty percent of
19 covered medical expenses which are in excess of the deduct-
20 ible, until twenty percent of such expenses in a benefit period
21 reaches one thousand dollars, after which benefits will be
22 paid at the rate of one hundred percent during the remainder
23 of such benefit period. Payment of benefits for outpatient

24 treatment of mental illness, if provided in the converted
25 policy, may be at a lesser rate but not less than fifty percent.

26 (c) A deductible for each benefit period which, at the
27 option of the insurer, shall be (1) the sum of the benefits
28 deductible and one hundred dollars, or (2) the corresponding
29 deductible in the group policy. The term "benefits deductible,"
30 as used herein, means the value of any benefits provided on
31 an expense incurred basis which are provided with respect to
32 covered medical expenses by any other hospital, surgical, or
33 medical insurance policy or hospital or medical service sub-
34 scriber contract or medical practice or other prepayment plan,
35 or any other plan or program whether on an insured or un-
36 insured basis, or in accordance with the requirements of any
37 state or federal law and, if pursuant to section eleven of this
38 article, the converted policy provides both basic hospital or
39 surgical coverage and major medical coverage, the value of
40 such basic benefits.

41 If the maximum benefit is determined by (a) (2) above,
42 the insurer may require that the deductible be satisfied
43 during a period of not less than three months if the deductible
44 is one hundred dollars or less, and not less than six months if
45 the deductible exceeds one hundred dollars.

46 (d) The benefit period shall be each calendar year when
47 the maximum benefit is determined by (a) (1) above or twenty-
48 four months when the maximum benefit is determined by (a)
49 (2) above.

50 (e) The term "covered medical expenses," as used above,
51 shall include at least, in the case of hospital room and board
52 charges, the lesser of the dollar amount in Plan A and the
53 average semiprivate room and board rate for the hospital in
54 which the individual is confined and twice such amount for
55 charges in an intensive care unit. Any surgical schedule shall
56 be consistent with those customarily offered by the insurer
57 under group or individual health insurance policies and must
58 provide at least a one thousand two hundred dollar maximum
59 benefit.

§33-16A-11. Combined policy coverage.

1 The conversion privilege required by this article shall, if

2 the group insurance policy insures the employee or member
3 for basic hospital or surgical expense insurance as well as
4 major medical expense insurance, make available the plans
5 of benefits set forth in sections nine and ten of this article.
6 At the option of the insurer, such plans or benefits may be
7 provided under one policy.

8 The insurer may also, in lieu of the plans of benefits set
9 forth in sections nine and ten of this article, provide a policy
10 of comprehensive medical expense benefits without first dol-
11 lar coverage. Said policy shall conform to the requirements of
12 section ten of this article: *Provided*, That an insurer electing
13 to provide such a policy shall make available a low deductible
14 option, not to exceed one hundred dollars, a high deductible
15 option between five hundred and one thousand dollars, and a
16 third deductible option midway between the high and low
17 deductible options.

18 The insurer may, at its option, also offer alternative plans
19 for group health conversion in addition to those required by
20 this article.

§33-16A-12. Coverage following retirement.

1 In the event coverage would be continued under the group
2 policy on an employee following his retirement, but prior to
3 the time he is or could be covered by medicare, he may elect,
4 in lieu of such continuation of group insurance, to have the
5 same conversion rights as would apply had his insurance ter-
6 minated at retirement by reason of termination of employment
7 or membership.

8 The converted policy may provide for reduction of coverage
9 on any person upon his eligibility for coverage under medicare
10 or under any other state or federal law providing for benefits
11 similar to those provided by the converted policy.

§33-16A-13. Other conversion privileges.

1 Subject to the conditions set forth in the previous sections
2 of this article, the conversion privilege shall also be available
3 (a) to the surviving spouse, if any, at the death of the em-
4 ployee or member, with respect to the spouse and such chil-
5 dren whose coverage under the group policy terminates by
6 reason of such death, otherwise to each surviving child whose
7 coverage under the group policy terminates by reason of such

8 death, or, if the group policy provides for continuation of de-
 9 pendents coverage following the employee's or member's
 10 death, at the end of such continuation, (b) to the spouse of
 11 the employee or member upon termination of coverage of the
 12 spouse, while the employee or member remains insured under
 13 the group policy, by reason of ceasing to be a qualified family
 14 member under the group policy, with respect to the spouse
 15 and such children whose coverage under the group policy
 16 terminates at the same time, or (c) to a child solely with re-
 17 spect to himself upon termination of his coverage by reason
 18 of ceasing to be a qualified family member under the group
 19 policy, if a conversion privilege is not otherwise provided
 20 above with respect to such termination.

**§33-16A-14. Benefit levels; election to provide group coverage;
 notification of conversion privilege; policy delivered
 outside state.**

1 If the benefit levels required in section nine of this article
 2 exceed the benefit levels provided under the group policy, the
 3 conversion policy may offer benefits which are substantially
 4 similar to those provided under the group policy in lieu of
 5 those required in section nine.

6 The insurer may elect to provide group insurance coverage
 7 in lieu of the issuance of a converted individual policy.

8 A notification of the conversion privilege shall be included
 9 in each certificate of coverage.

10 A converted policy which is delivered outside this state
 11 must be on a form which could be delivered in such other
 12 jurisdiction as a converted policy had the group policy been
 13 issued in that jurisdiction.

CHAPTER 58

(Com. Sub. for H. B. 1321—By Mr. Speaker, Mr. Kopp, and Mr. Teets)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend article six, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

by adding thereto a new section, designated section five-a; to amend and reenact section twenty-two-a, article thirteen, chapter eight; to amend and reenact article one, chapter twelve; to amend and reenact sections one, two, three and four, article two, chapter twelve; to amend and reenact sections one and four, article three, chapter twelve; to further amend said article three by adding thereto a new section, designated section one-a; to amend and reenact sections two and three, article four, chapter twelve; to further amend said article four by adding thereto two new sections, designated sections eleven and twelve; to amend and reenact sections two and five, article five, chapter twelve; to amend and reenact article six, chapter twelve; to amend article nine, chapter eighteen, by adding thereto a new section, designated section six-a; and to amend and reenact section seven-a, article one, chapter fifty-seven, all of said code, all relating to public moneys and securities generally; legislative findings and purpose; designation of depositories for demand deposits of state funds; requiring a depository for demand deposits to have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans in single or multi-family residential units, excluding mobile homes; requiring board of investments to select such depositories through competitive bidding; requiring demand funds in both disbursements and receipts to be proportionately distributed among certain categories of state depositories based upon total assets of such depository; rules and regulations for bidding; depositories for interest earning deposits; requiring a depository for interest earning deposits to have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loan in single or multi-family residential units, excluding mobile homes; relating to depository bonds; providing limitation on the amount of deposits and making it unlawful for depositories to exceed such limitations; general authority of board of investments to promulgate rules and regulations; depositors' agreements; ineligibility of depositories to serve as depositories in cases of conflict of interest of member of board of investments; methods for transfer of funds; treasurer's accounts and settlement of accounts with depositories; treasurer's reports of account balances; requiring reports by depositories to board of investments; authorizing board to discontinue depositories for certain causes; authorizing

treasurer to make funds available to board of investments; requiring board to invest such funds for general revenue fund; relating to payment and deposit of moneys due the state; authorizing treasurer to promulgate rules and regulations prescribing procedure for deposits; deposit lists and report forms; duties of depositories upon receipt of deposits; relating to payment of moneys from the treasury; authorizing treasurer to make payments by deposit to payee's bank account in state depository only; use of bank wires; relating to certification of condition of revenues and funds by auditor; establishing an exceptional items fund; specifying purposes of such fund; authorizing issuance of substitute checks in certain instances; authorizing treasurer to provide check-cashing service; relating to custody, protection and handling of securities belonging to or deposited with the state; relating to the state board of investments; purposes and objects; providing definitions; continuation of board; membership and organization; bonds of the state board of investments, its members and employees; powers of the board; disposition of fees collected from political subdivisions; continuing the legal status of all agencies and boards; establishing consolidated pension fund for combined investment of moneys made available from workmen's compensation and retirement system funds; establishing consolidated fund for combined investment of other state moneys and moneys made available to board by political subdivisions; authorizing treasurers of political subdivisions to make funds available and enter into agreements with board; authorizing board to adopt rules and regulations for administration of funds; specifying permissible investments and restrictions on investments; requiring board to apportion offers to invest in interest earning deposits among state depositories; providing basis for apportionment; authorizing board to fix interest rates on such investments; relating to investment policy and standard of care imposed on board; requiring treasurer to administer policy; making board of investments sole agency for investment of state moneys with certain exceptions; reports by board; audits; authorizing retention of existing investments; providing a severability clause; relating to investment of funds by counties, county boards of education and municipalities; authorizing county treasurer, municipal treasurer and treasurer of each county board of education to make funds available to

board of investments; relating to public records; authorizing treasurer to destroy certain canceled checks and certain canceled bonds and coupons; and authorizing treasurer to contract for the destruction of certain bonds and coupons.

Be it enacted by the Legislature of West Virginia:

That article six, 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 five-a; that section twenty-two-a, article thirteen, chapter eight be amended and reenacted; that article one, chapter twelve be amended and reenacted; that sections one, two, three and four, article two, chapter twelve be amended and reenacted; that sections one and four, article three, chapter twelve be amended and reenacted; that said article three be further amended by adding thereto a new section, designated section one-a; that sections two and three, article four, chapter twelve be amended and reenacted; that said article four be further amended by adding thereto two new sections, designated sections eleven and twelve; that sections two and five, article five, chapter twelve be amended and reenacted; that article six, chapter twelve be amended and reenacted; that article nine, chapter eighteen be amended by adding thereto a new section, designated section six-a; and that section seven-a, article one, chapter fifty-seven of said code, be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 12. Public Moneys and Securities**
- 18. Education.**
- 57. Evidence and Witnesses.**

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-5a. County treasurer authorized to make funds available to state board of investments; allocation of income.

- 1 Notwithstanding any other provision of this code, when it
- 2 appears to any of the various fiscal bodies of the county that
- 3 funds on deposit in its demand deposit account exceed the

4 current requirements or demands, and it further be deter-
5 mined by the county treasurer that the available interest rate
6 offered by an acceptable depository in such treasurer's county
7 be less than the interest rate, net of administrative fees re-
8 ferred to in article six, chapter twelve of this code, offered it
9 through the state board of investments, the county treasurer
10 may, with the approval in writing of each fiscal body whose
11 funds are involved, make such funds available to the state
12 board of investments for investment in accordance with the
13 provisions of said article six, chapter twelve of the code.

14 Any income earned on such investment shall be allocated by
15 such treasurer to the fiscal body whose funds were made
16 available, such allocation to be made in accordance with the
17 accounting and allocation principles established by the board
18 of investments.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22a. Investment of municipal funds.

1 All municipal funds the investment of which is not governed
2 by other provisions of this code and not required for the pay-
3 ment of current obligations and not otherwise prohibited, may
4 be:

5 (1) Made available by the municipal treasurer to the state
6 board of investments for investment in accordance with the
7 provisions of article six, chapter twelve of this code, if it be
8 determined by such municipal treasurer that the available in-
9 terest rate offered by an acceptable depository in such treasur-
10 er's municipality be less than the interest rate, net of adminis-
11 trative fees referred to in article six, chapter twelve of this code,
12 offered it through the state board of investments; or

13 (2) Invested by such treasurer in the following classes of
14 securities and accounts which securities and accounts mature
15 on such dates as will make available such amount of cash
16 as is required:

17 (a) Obligations of the United States or any agency thereof,
18 which are guaranteed by the United States or for which the

19 full faith and credit of the United States is pledged for the
20 payment of principal and interest, or any obligation of an
21 agency of the United States designated in section nine, article
22 six, chapter twelve of this code.

23 (b) Certificates of deposit secured by (1) obligations as
24 listed in the preceding paragraph of this subdivision, (2)
25 general obligation or revenue bonds of the state of West Vir-
26 ginia, (3) general obligation bonds of any other state, (4)
27 general obligation bonds of any county in this state or of any
28 county board of education in this state, or (5) general obliga-
29 tion bonds of any municipality in this state.

30 (c) Interest bearing savings accounts in banking institu-
31 tions, the accounts of which are insured by the federal deposit
32 insurance corporation, or in federal savings and loan associa-
33 tions, the accounts of which are insured by the federal savings
34 and loan insurance corporation, or in building and loan associa-
35 tions, the accounts of which are insured by the federal savings
36 and loan insurance corporation: *Provided*, That an investment
37 in any such savings account in excess of the amount insured
38 by the federal deposit insurance corporation or the federal
39 savings and loan insurance corporation, as the case may be,
40 shall not be made unless such banking institution, federal
41 savings and loan association or building and loan association
42 provides adequate bond or other adequate security for the
43 amount of the proposed municipal investment in excess of such
44 insurance coverage, the adequacy of any such bond or other
45 security to be determined by the treasurer of such munic-
46 ipality.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1. State Depositories.
2. Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.
3. Appropriations and Expenditures.
4. Accounts, Reports and General Provisions.
5. Public Securities.
6. West Virginia State Board of Investments.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-1. Legislative findings and purpose.

- §12-1-2. Depositories for demand deposits; apportionment of deposits; board authorized to select depositories through competitive bidding; maintenance of deposits by treasurer.
- §12-1-3. Depositories for interest earning deposits.
- §12-1-4. Bonds to be given by depositories.
- §12-1-5. Limitation on amount of deposits.
- §12-1-6. Unlawful acceptance of deposits by depositories.
- §12-1-7. Rules and regulations of the board of investments; depositors' agreements.
- §12-1-8. Conflict of interest.
- §12-1-9. Transfer of funds by check or bank wire; requirements.
- §12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; reports showing depository balances.
- §12-1-11. Reports by depositories to board of investments; discontinuance of depositories.
- §12-1-12. When treasurer may make funds available to the board of investments; depositories outside the state.

§12-1-1. Legislative findings and purpose.

1 The Legislature finds and declares that the efficient col-
 2 lection, disbursement, management and investment of public
 3 moneys in the state treasury will benefit the citizens of this
 4 state by reducing the costs of government and providing sources
 5 of increased revenue without the necessity of increased taxa-
 6 tion; and to this end, the state board of investments and the
 7 state treasurer should be given the authority to develop and
 8 maintain modern systems, consistent with sound financial
 9 practices, for the collection, disbursement, management and
 10 investment of such moneys.

§12-1-2. Depositories for demand deposits; apportionment of deposits; board authorized to select depositories through competitive bidding; maintenance of deposits by treasurer.

1 The state board of investments shall designate the state and
 2 national banks in this state which shall serve as depositories for
 3 all state funds placed in demand deposits. Any such state or
 4 national bank shall, upon request to such board, be designated
 5 as a state depository for such deposits, if such bank meets the
 6 requirements set forth in this chapter: *Provided*, That not-
 7 withstanding any provision of this article to the contrary, no
 8 state funds may be deposited in any bank which has been in
 9 existence over a period of five years which does not have a

10 loan to deposit ratio of fifty percent or more and twenty-five
11 percent of its loans shall be in single or multi-family residential
12 units, excluding mobile homes.

13 The state treasurer shall apportion demand deposits among
14 such depositories, giving due consideration to: (1) The activity
15 of the various accounts maintained therein; (2) the reasonable
16 value of the banking services rendered or to be rendered the
17 state by such depositories; and (3) the value and importance of
18 such deposits to the economy of the communities and the
19 various areas of the state affected thereby: *Provided*, That on
20 and after the first day of July, one thousand nine hundred
21 seventy-eight, the board shall select depositories for demand
22 deposits through competitive bidding by banks in this state:
23 *Provided, however*, That demand funds in both disbursements
24 and receipts shall be proportionately distributed among the fol-
25 lowing categories of such depositories, based upon the total
26 assets of such depository: (a) Depositories whose total
27 assets are not greater than twenty-five million dollars, (b)
28 depositories whose total assets are greater than twenty-five
29 million dollars but not greater than fifty million dollars, or (c)
30 depositories whose total assets are greater than fifty million
31 dollars. The board shall promulgate rules and regulations
32 prescribing the procedures and criteria for such bidding and
33 selection. It shall, in its invitations for bids, specify the
34 approximate amounts of deposits, the duration of contracts
35 to be awarded and such other contractual terms as it considers
36 to be in the best interests of the state, consistent with obtaining
37 the most efficient service at the lowest cost. The board shall
38 provide for and invite bids on separate or combined classifica-
39 tions of services including, but not limited to depositories for
40 receipts, depositories for disbursements, and depositories for
41 moneys to be invested by the state: *Provided further*, That the
42 depositories for such demand deposits shall be determined by
43 the board through competitive bidding separately for each
44 category of depositories created in this section.

45 The amount of money needed for current operational pur-
46 poses of the state government, as determined by the state
47 treasurer, shall be maintained at all times in the state treasury
48 in cash or in demand deposits with banks designated as de-
49 positories in accordance with the provisions of this section.

50 No state officer or employee shall make or cause to be made
51 any deposits of state funds in banks not so designated.

§12-1-3. Depositories for interest earning deposits.

1 Any state or national bank or any state or federal savings
2 and loan association in this state shall, upon request made to
3 the board of investments, be designated as an eligible deposi-
4 tory for interest earning deposits of state funds if such bank
5 or state or federal savings and loan association meets the re-
6 quirements set forth in this chapter. For purposes of this arti-
7 cle, the term "interest earning deposits" includes certificates of
8 deposit. The board of investments, acting through the treasur-
9 er, shall make and apportion such interest earning deposits and
10 shall prescribe the interest rates, terms and conditions of such
11 deposits, all in accordance with the provisions of article six of
12 this chapter: *Provided*, That state or federal savings and loan
13 associations insured by an agency of the federal government
14 shall be eligible for such deposits not in excess of forty thou-
15 sand dollars: *Provided, however*, That notwithstanding any
16 provision of this article to the contrary, no such interest earning
17 deposits may be deposited in any depository which has been
18 in existence over a period of five years which does not have a
19 loan to deposit ratio of fifty percent or more and twenty-five
20 percent of its loans shall be in single or multi-family residential
21 units, excluding mobile homes.

§12-1-4. Bonds to be given by depositories.

1 Before allowing any money to be deposited with any eligible
2 depository in excess of the amount insured by an agency of
3 the federal government, the board of investments shall
4 require such depository to give a collaterally secured bond,
5 in the amount of not less than ten thousand dollars, payable
6 to the state of West Virginia, conditioned upon the prompt
7 payment, whenever lawfully required, of any state money, or
8 part thereof, that may be deposited with such depository, or
9 of any accrued interest on deposits. Such bond shall be
10 a continuous bond but may be increased or decreased in
11 amount or replaced by a new bond with the approval of
12 the board of investments. The collateral security for such
13 bond shall consist of bonds of the United States, of the

14 federal land banks, of the federal home loan banks, or
15 bonds of the state of West Virginia or of any county, district
16 or municipality of this state, or other bonds or securities
17 approved by the board of investments. All bonds so secured
18 are here designated as collaterally secured bonds. Withdrawal
19 or substitution of any collateral pledged as security for
20 the performance of the conditions of such bond may be
21 permitted with the approval in writing of the treasurer who
22 shall report such withdrawal or substitution at the next
23 meeting of the board. All depository bonds shall be recorded
24 by the treasurer in a book kept in his office for the purpose,
25 and a copy of such record, certified by him, shall be prima
26 facie evidence of the execution and contents of such bond
27 in any suit or legal proceeding. All collateral securities shall
28 be delivered to or deposited for the account of the treasurer
29 of the state of West Virginia, and in the event said securities
30 are delivered to the treasurer, he shall furnish a receipt
31 therefor to the owner thereof. The treasurer and his bonds-
32 men shall be liable to any person for any loss by reason of
33 the embezzlement or misapplication of said securities by the
34 treasurer or any of his employees, and for the loss thereof
35 due to his negligence or the negligence of any of his employees;
36 and such securities shall be delivered to the owner thereof
37 when liability under the bond which they are pledged to secure
38 has terminated. The treasurer may permit the deposit under
39 proper receipt of such securities with one or more banking
40 institutions within or outside the state of West Virginia
41 and may contract with any such institution for safekeeping
42 and exchange of any such collateral securities, and may
43 prescribe the rules and regulations for handling and protecting
44 the same, subject to the approval of the board of investments.

§12-1-5. Limitation on amount of deposits.

1 The amount of state funds on deposit in any depository in
2 excess of the amount insured by an agency of the federal gov-
3 ernment shall not exceed ninety percent of the value of
4 collateral pledged on the collaterally secured bond given by
5 such depository. The value of such collateral shall be de-
6 termined by the board of investments.

§12-1-6. Unlawful acceptance of deposits by depositories.

1 It is unlawful for any depository to accept and retain state
2 deposits in excess of the amount permitted by application of
3 the preceding section or in an amount greater than its paid up
4 capital stock and surplus.

§12-1-7. Rules and regulations of the board of investments; depositories' agreements.

1 In addition to rules and regulations specially authorized in
2 this article, the board of investments is generally authorized
3 to promulgate any rules and regulations it deems necessary
4 to protect the interests of the state, its depositories and tax-
5 payers. All rules and regulations promulgated by the board
6 shall be subject to the provisions of article three, chapter
7 twenty-nine-a of this code. Any rules and regulations pre-
8 viously established by the board of public works pursuant to
9 this article shall remain in effect until amended, superseded
10 or rescinded by the board of investments.

11 The board of investments is also authorized to enter into
12 any depositories' agreements for the purpose of reorganizing or
13 rehabilitating any depository in which state funds are deposited,
14 and for the purpose of transferring the assets, in whole or in
15 part, of any such depository to any other lawful depository
16 when, in the judgment of the board, the interests of the state
17 will be promoted thereby, and upon condition that no right
18 of the state to preferred payment be waived.

§12-1-8. Conflict of interest.

1 No depository in this state may serve or be eligible for desig-
2 nation as a state depository if any member of the board of in-
3 vestments, or a spouse, child or parent of such member, is an
4 officer, director or employee thereof, or owns, either in his
5 or their own name or beneficially, an interest in such deposi-
6 tory. A member of the board shall disclose such circumstance,
7 if any, in the sworn statement required under the provisions of
8 section one, article one, chapter six-b of this code.

§12-1-9. Transfer of funds by check or bank wire; requirements.

1 Subject to applicable banking regulations or state law, the
2 treasurer may transfer funds by check or bank wire when-

3 ever actually needed to pay the warrants drawn by the auditor
4 upon the treasury, to equalize deposits or to provide funds to
5 purchase investments for the account of the state. All checks
6 drawn for transfer of funds shall have printed or stamped on
7 the face of same "for transfer of funds only," or if the trans-
8 fer is made by wire, the bank wire and supporting documents
9 shall be marked "for transfer of funds only."

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; reports showing depository balances.

1 The treasurer shall keep in his office a record showing the
2 account of each depository, under which account entry shall
3 be made showing the amount and date of each deposit, the
4 amount and date of each withdrawal, and the balance on
5 deposit. He shall cause his account with each depository to
6 be settled at the end of every quarter of the year and the
7 balance in such depository to the credit of the treasury to be
8 carried forward to the account of the next quarter.

9 The treasurer shall furnish the board of investments and
10 the president and minority leader of the Senate and the
11 speaker and minority leader of the House of Delegates, not
12 later than the tenth day of each month, a statement showing
13 the daily balances for each day on the last day of the preceding
14 month in each state depository.

§12-1-11. Reports by depositories to board of investments; discontinuance of depositories.

1 Each depository of state funds shall at the end of each
2 quarter cause its president or cashier to report to the board of
3 investments the amount of state funds on deposit and such
4 report shall be verified by the affidavit of the officer making
5 it. The form and contents of such report shall be prescribed
6 by the board. For the failure to file such report, or for other
7 good cause, the board may discontinue any depository as an
8 eligible depository and cause all state funds to be withdrawn
9 from any depository or depositories so discontinued. When a
10 depository is discontinued, the board of investments shall im-
11 mediately notify such depository of its discontinuance, and shall
12 also issue its order to the treasurer, directing him immediately
13 to withdraw by current checks or by transfer to another de-

14 pository or depositories the full amount of the deposits held by
 15 any depository so discontinued. After such discontinuance it
 16 shall be unlawful for the treasurer to deposit any state funds in
 17 any depository so discontinued until such time as the deposi-
 18 tory may be reinstated to eligibility.

§12-1-12. When treasurer may make funds available to the board of investments; depositories outside the state.

1 When the funds in the treasury exceed the amount needed
 2 for current operational purposes as determined by the trea-
 3 surer, he may make all or part of such excess available for
 4 investment by the board of investments, which shall invest
 5 the same for the benefit of the general revenue fund.

6 Whenever the funds in the treasury exceed the amount for
 7 which depositories within the state have qualified, or the
 8 depositories within the state which have qualified are unwill-
 9 ing to receive larger deposits, the board of investments may
 10 designate depositories outside the state, demand deposits be-
 11 ing bid for in the same manner as required by depositories
 12 within the state, and when such depositories outside the
 13 state have qualified by giving the bond prescribed in section
 14 four of this article, the state treasurer shall deposit funds there-
 15 in in like manner as funds are deposited in depositories within
 16 the state under this article.

17 The treasurer may transfer funds to banks outside the
 18 state for investment purposes or to meet obligations to paying
 19 agents outside the state and such transfers although not con-
 20 sidered to be deposits for purposes of this section, must meet
 21 the same bond requirements as set forth in this article for such
 22 deposits.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

§12-2-3. Deposit of moneys by treasurer; deposit report to be sent by treasurer to auditor and director of budget.

§12-2-4. Duty of depositories.

§12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, department, board, commission or other collecting agency thereof may be paid.

1 All persons, firms and corporations shall promptly pay all
2 taxes and other amounts due from them to the state, or to any
3 political subdivision, official, department, board, commission
4 or other collecting agency thereof authorized by law to collect
5 the same, in money, United States currency or by check, bank
6 draft, certified check, cashier's check, post-office money order,
7 or express money order payable and delivered to the official,
8 department, board, commission or collecting agency thereof
9 authorized by law to collect the same and having the account
10 upon which such taxes or amounts are chargeable against the
11 payer thereof. The duly elected or appointed officers of the
12 state and of its political subdivisions, departments, boards,
13 commissions and collecting agencies having the account on
14 which taxes or other amounts are chargeable against the
15 payer thereof and authorized by law to collect the same, and
16 their respective agents, deputies, assistants and employees
17 shall in no case be the agent of the payer in and about the
18 collection of such taxes or other amounts, but shall at all
19 times and under all circumstances be the agent of the state, its
20 political subdivision, official, department, board, commission
21 or collecting agency having the account on which such taxes
22 or amounts are chargeable against the payer thereof and
23 authorized by law to collect the same.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 All officials and employees of the state authorized by
2 statute to accept moneys due the state of West Virginia shall
3 keep a daily itemized record of such moneys so received for
4 deposit in the state treasury and shall deposit promptly with
5 the state treasurer all moneys received or collected by them
6 for or on behalf of the state for any purpose whatsoever. The
7 treasurer may promulgate rules and regulations governing
8 the procedure for such deposits. When so paid, such moneys
9 shall be credited to the state fund and treated by the auditor
10 and treasurer as part of the general revenue of the state,

11 and shall not be used for any purpose whatsoever unless and
12 until authorized and directed by the Legislature, except the
13 following funds:

14 (a) All moneys received out of appropriations made by
15 the Congress of the United States;

16 (b) All funds derived from the sale of farm and dairy
17 products from farms operated by any agency of state govern-
18 ment other than the farm management commission;

19 (c) All endowment funds, bequests, donations, executive
20 emergency funds, and death and disability funds;

21 (d) All fees and funds collected at state educational
22 institutions for student activities;

23 (e) All funds derived from collections from dormitories,
24 boardinghouses, cafeterias and road camps;

25 (f) All moneys received from counties by institutions for
26 the deaf and blind on account of clothing for indigent pupils;

27 (g) All insurance collected on account of losses by fire and
28 refunds;

29 (h) All funds derived from bookstores and sales of blank
30 paper and stationery, and collections by the chief inspector
31 of public offices;

32 (i) All moneys collected and belonging to the capitol
33 building fund, state road fund, state road sinking funds,
34 general school fund, school fund, state fund (moneys belonging
35 to counties, districts and municipalities), state interest and
36 sinking funds, state compensation funds, the fund maintained
37 by the public service commission for the investigation and
38 supervision of applications and licenses under article nine,
39 chapter thirty-one of this code, and all funds and moneys
40 payable to or received by the natural resources commission
41 of West Virginia;

42 (j) All moneys collected or received under any act of
43 the Legislature providing that funds collected or received
44 thereunder shall be used for specific purposes.

45 All moneys, excepted as aforesaid, shall be paid into the

46 state treasury in the same manner as collections not so
47 excepted, and shall be carried in separate accounts to be
48 used and expended only for the purposes for which the same
49 are authorized to be collected by law. The gross amount
50 collected in all cases shall be paid into the state treasury,
51 and commissions, costs and expenses of collection authorized
52 by general law to be paid out of the gross collection are
53 hereby authorized to be paid out of the moneys collected
54 and paid into the state treasury in the same manner as other
55 payments are made from the state treasury.

56 The official or employee making such deposits in the state
57 treasury shall prepare such deposit lists in such manner and
58 upon such report forms as may be prescribed by the treasurer.
59 The original of this report shall accompany the deposit to
60 the treasurer's office. Certified or receipted copies shall
61 be immediately forwarded by the official or employee making
62 such deposit to the state auditor and to the commissioner of
63 finance and administration, and a copy shall be kept by the
64 official or employee making the report and shall become a
65 part of his permanent record.

**§12-2-3. Deposit of moneys by treasurer; deposit report to be sent
by treasurer to auditor and director of budget.**

1 The treasurer shall promptly transmit or cause to be trans-
2 mitted such deposits, together with a certificate of deposit,
3 as soon as practicable to the depository in which he desires to
4 make the deposit, and shall retain and record the deposit
5 lists. A copy of each deposit report received by the treasurer
6 shall be sent to the auditor and the director of the budget
7 daily.

§12-2-4. Duty of depositories.

1 Immediately upon the receipt of such deposit, it shall be
2 the duty of the depository to credit the state treasurer with
3 the amount of the deposit, to date and sign the certificate of
4 deposit by some legally constituted official of the depository
5 and promptly transmit such certificate to the state treasurer,
6 who shall immediately transmit a copy thereof to the state
7 auditor.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-1. Manner of payment from treasury; form of checks.

§12-3-1a. Payment by deposit in bank account.

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or bank wire.

§12-3-1. Manner of payment from treasury; form of checks.

1 Every person claiming to receive money from the treasury
2 of the state shall apply to the auditor for a warrant for same.
3 The auditor shall thereupon examine the claim, and the
4 vouchers, certificates and evidence, if any, offered in support
5 thereof, and for so much thereof as he shall find to be justly
6 due from the state, if payment thereof be authorized by law,
7 and if there be an appropriation not exhausted or expired out
8 of which it is properly payable, he shall issue his warrant on
9 the treasurer, specifying to whom and on what account the
10 money mentioned therein is to be paid, and to what appro-
11 priation the same is to be charged. On the presentation of
12 such warrant to the treasurer, he shall ascertain whether the
13 same has been drawn in pursuance of an appropriation made
14 by law, and if he finds it to be so, he shall in that case, but
15 not otherwise, endorse his check upon such warrant, directed
16 to some depository, which check shall be payable to the order
17 of the person who is to receive the money therein specified; or
18 he may issue a bank wire in payment of such warrant. If such
19 check shall not be presented for payment within three years
20 after it is drawn, it shall then be the duty of the treasurer to
21 credit it to the depository on which it was drawn, to credit the
22 state fund with the amount, and immediately notify the auditor
23 to make corresponding entries on his books. No state deposi-
24 tory shall pay a check unless it is presented within six months
25 after it is drawn and every check shall bear upon its face
26 the words, "Void, unless presented for payment within six
27 months." All claims required by law to be allowed by any
28 court, and payable out of the state treasury, shall have the
29 seal of the court allowing or authorizing the payment of the
30 same affixed by the clerk of such court to his certificate of
31 its allowance; and no such claim shall be audited and paid
32 by the auditor unless the seal of such court be thereto at-
33 tached as aforesaid. No tax or fee shall be charged by the clerk
34 for affixing his seal to the certificate referred to in this section.

§12-3-1a. Payment by deposit in bank account.

1 The treasurer may pay any person claiming to receive
2 money from the treasury by deposit to such person's account
3 in any bank or other financial institution within the state
4 authorized to receive deposits, if such person furnishes to the
5 treasurer written authorization of such method of payment. The
6 treasurer shall prescribe the form of such authorization. This
7 section shall not be construed to require the treasurer to
8 utilize the method of payment authorized by this section; but
9 such method is authorized only as an alternative method of
10 payment to persons claiming to receive money from the
11 treasury. A written authorization furnished pursuant to this
12 section may be revoked by written notice furnished to the
13 treasurer.

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or bank wire.

1 The treasurer shall draw no check on any depository unless
2 there be money enough therein to the credit of the treasury
3 to pay such check when duly presented for payment. No de-
4 pository holding money to the credit of the treasury shall pay
5 out the same, or any part thereof, except upon a check of the
6 treasurer endorsed on a warrant of the auditor authorizing
7 such check or a duly authorized bank wire drawn in place of
8 such check.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.

§12-4-3. Accounts of appropriations.

§12-4-11. Exceptional items fund.

§12-4-12. Treasurer authorized to provide check-cashing service; establishment and audit of cash funds.

§12-4-2. Accounts of treasurer and auditor; auditor to certify condition of revenues and funds of the state.

1 The treasurer shall keep in his office separate accounts
2 with each depository, and also a general account of receipts
3 and disbursements for the state, and when money is paid into
4 the treasury, it shall be charged to the proper depository and
5 credited to such general account. The auditor shall keep in
6 his office separate accounts of the particular heads or sources

7 of revenue, and a general account with the treasurer, beside
8 such individual accounts with officers and persons as may be
9 necessary, and shall charge every sum of money received for
10 the state as aforesaid to the treasurer's account, and credit it
11 under the particular head of revenue to which it properly
12 belongs, distinguishing especially in distinct accounts the re-
13 cepts on account of the capital of the school fund and those
14 on account of the income of said fund subject to annual dis-
15 tribution. The auditor shall certify annually to the commis-
16 sioner of finance and administration the condition of the state
17 revenues and the several funds of the state. Such certification
18 shall be used by the commissioner in the preparation of a
19 tentative state budget as required of him by article two, chap-
20 ter five-a of this code.

§12-4-3. Accounts of appropriations.

1 The auditor and treasurer shall each keep in books, to
2 be used for that purpose exclusively, an account of every
3 appropriation made by law, and of the several sums drawn
4 thereon, so that such books may show at all times the balance
6 undrawn on each appropriation. The account so kept shall
7 be compared every quarter and the errors, if any, corrected.

§12-4-11. Exceptional items fund.

1 (a) There is hereby created in the treasurer's office a
2 special fund known as the "exceptional items fund" to be
3 administered by the treasurer pursuant to the provisions of
4 this section and rules and regulations established thereunder.

5 (b) The treasurer is authorized to make transfers to and
6 from the exceptional items fund for the purpose of clearing
7 irreconcilable items carried forward on his accounts with
8 state depositories: *Provided*, That no transfer may be made
9 as to any irreconcilable item in excess of fifty dollars without
10 the approval of the state auditor.

11 (c) The treasurer and auditor shall jointly promulgate
12 rules and regulations establishing procedures and conditions
13 for issuance of substitute checks to payees in cases where
14 the checks originally issued are erroneous, or have been
15 lost, mutilated, destroyed, stolen or forged. Any disbursements

16 pursuant to such rules and regulations shall be made from the
17 exceptional items fund. Any moneys received by the state
18 from persons responsible for wrongfully cashing such originally
19 issued checks shall be deposited in such fund.

**§12-4-12. Treasurer authorized to provide check-cashing service;
establishment and audit of cash funds.**

1 The treasurer may provide a check-cashing service at his
2 office in the capitol building and may charge fees for such
3 service for each check cashed and for each check returned
4 for insufficient funds. For this purpose, he may establish
5 from receipts in the treasury not more than two cash funds
6 each in an initial amount not to exceed fifty thousand dollars.
7 He shall designate certain employees in his office who are
8 to provide the service and have charge of such funds, and
9 may require such employees to be bonded either individually
10 or by blanket bonds. The cost of such bond or bonds shall
11 be paid out of the treasurer's current expense appropriation.

12 The fees received for such service shall be deposited in
13 the cash funds and itemized accounts of such receipts shall
14 be maintained. Any check determined by the treasurer to be
15 uncollectible shall be charged against the fund from which
16 it was cashed. The legislative auditor shall, at least annually,
17 but may at any time, audit the cash funds and all accounts
18 and records relating to the service provided pursuant to this
19 section. If the amount of either cash fund (after charges for
20 uncollectible checks) exceeds fifty thousand dollars at the
21 conclusion of any audit, the treasurer shall transfer such
22 excess to the general revenue fund.

ARTICLE 5. PUBLIC SECURITIES.

**§12-5-2. Treasurer custodian of securities; charges to companies for care,
exchange and substitution of securities.**

§12-5-5. Protection and handling of securities.

**§12-5-2. Treasurer custodian of securities; charges to companies
for care, exchange and substitution of securities.**

1 The treasurer of this state, unless otherwise expressly
2 provided by law, shall be custodian of all securities belonging
3 to the state of West Virginia or by law required to be de-
4 posited with the state or held in legal custody by the
5 state, and all departments of this state, commissioners or

6 agents of the state, who hold any such securities, shall
7 transfer and deliver the same to the state treasurer to be
8 kept and held by him as legal custodian thereof until released
9 in the manner provided by law.

10 The board of investments may by formal order of record
11 fix fair and reasonable charges for the care, custody, exchange
12 and substitution of securities deposited by insurance com-
13 panies and companies issuing annuity contracts and such
14 charges shall be collected from such companies by the state
15 treasurer and deposited by him in the general revenue fund:
16 *Provided*, That no such charge shall be made against any
17 such company having securities of the par value of less than
18 three hundred thousand dollars deposited hereunder.

§12-5-5. Protection and handling of securities.

1 The treasurer shall use due diligence in protecting such
2 securities against loss from any cause. The securities retained
3 in the treasury shall be kept in a vault. The treasurer shall
4 designate certain of his employees to take special care of such
5 securities. Only the treasurer and such designated employees
6 shall have access to such securities, and at least two of
7 these persons shall be present whenever such securities are
8 handled in any manner. The employees so designated by the
9 treasurer to take care of such securities shall, before entering
10 upon the discharge of their duties under this article, execute
11 a bond to be approved by the board of investments in a
12 penalty to be fixed by said board. When the treasurer has
13 designated the employees to take special care of such securities,
14 he shall not remove or replace any of such employees until
15 due notice in writing of his intention so to do has been
16 given to the surety or sureties on such employee's bond:
17 *Provided*, That the treasurer may, with the approval of
18 the board of investments, contract with one or more bank-
19 ing institutions in or outside the state for the custody,
20 safekeeping and management of such securities, which con-
21 tract shall prescribe the rules and regulations for the handling
22 and protection thereof.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-1. Purposes and objects; how article cited.

§12-6-2. Definitions.

- §12-6-3. State board of investments continued; body corporate; members.
- §12-6-4. Officers; organization; surety bonds for members and employees.
- §12-6-5. Powers of the board.
- §12-6-6. Costs and expenses; fees for services.
- §12-6-7. Legal status of agencies and boards continued.
- §12-6-8. Investment funds established; management thereof.
- §12-6-9. Permissible investments.
- §12-6-10. Restrictions on investments.
- §12-6-11. Apportionment of interest earning deposits among state depositories; interest rate on such deposits.
- §12-6-12. Investment policy; duties of board and state treasurer; standard of care.
- §12-6-13. Board as sole agency for investments; exceptions.
- §12-6-14. Reports of board.
- §12-6-15. Audits.
- §12-6-16. Existing investments.
- §12-6-17. Severability of provisions.

§12-6-1. Purposes and objects; how article cited.

1 This article, which may be cited as the "Investment Man-
2 agement Law" is enacted to modernize the procedures for the
3 investment of funds of the state and its political subdivisions
4 for the purpose of increasing the investment return of such
5 funds.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 (1) "Board" means the West Virginia state board of in-
4 vestments;

5 (2) "Consolidated fund" means the investment fund man-
6 aged by the board and established pursuant to subsection (b),
7 section eight of this article;

8 (3) "Consolidated pension fund" means the investment fund
9 managed by the board and established pursuant to subsection
10 (a), section eight of this article;

11 (4) "Local government account" means the account within
12 the consolidated fund established pursuant to subsection (b),
13 section eight of this article;

14 (5) "Local government funds" means the moneys of a

15 political subdivision transferred to the board for deposit in
16 the local government account;

17 (6) "Pension funds" means and includes the workmen's
18 compensation fund; the state teachers retirement system
19 funds; the death disability and retirement fund for members
20 of the department of public safety; the public employees
21 retirement system funds; the judges retirement fund; and such
22 other retirement or pension funds and systems as may be
23 hereafter established on behalf of public employees of the state
24 or of its political subdivisions and administered by the state;

25 (7) "Securities" means all bonds, notes, debentures or other
26 evidences of indebtedness;

27 (8) "State account" means the account within the consoli-
28 dated fund established pursuant to subsection (b), section
29 eight of this article; and

30 (9) "State funds" means all moneys of the state which may
31 be lawfully invested except (a) the pension funds (as defined
32 in subdivision (6) of this section), (b) the "school fund" es-
33 tablished by section four, Article XII of the state constitu-
34 tion and (c) the sinking funds administered and controlled by
35 the state municipal bond commission.

§12-6-3. State board of investments continued; body corporate; members.

1 The state board of investments is hereby continued as a
2 body corporate of the state authorized to exercise all of the
3 powers and functions granted to it pursuant to this article.
4 The governor, state treasurer and state auditor shall be the
5 members of the board.

§12-6-4. Officers; organization; surety bonds for members and employees.

1 The governor shall be the chairman and the state treasurer
2 shall be the executive secretary of the board and the custodian
3 of all funds, securities and assets held by the board. The office
4 of the state treasurer shall act as staff agency for the board.

5 The board shall meet quarterly and may include in its by-

6 laws procedures for the calling and holding of additional
7 meetings.

8 Each member of the board shall give a separate and addi-
9 tional fidelity bond from a surety company qualified to do
10 business within this state in a penalty amount of two hundred
11 fifty thousand dollars for the faithful performance of his duties
12 as a member of the board. In addition, the board will pur-
13 chase a blanket bond for the faithful performance of its duties
14 in the amount of five million dollars excess of the two hundred
15 fifty thousand dollar individual bond required of each member
16 by the provisions of this section. The board may require a
17 fidelity bond from a surety company qualified to do business
18 in this state for any person who has charge of, or access to,
19 any securities, funds or other moneys held by the board, and
20 the amount of such fidelity bond shall be fixed by the board.
21 The premiums payable on all fidelity bonds shall be an ex-
22 pense of the board.

§12-6-5. Powers of the board.

1 The board may exercise all powers necessary or appropriate
2 to carry out and effectuate its corporate purposes. The board
3 may:

4 (1) Adopt and use a common seal and alter the same at
5 pleasure;

6 (2) Sue and be sued;

7 (3) Enter into contracts and execute and deliver instru-
8 ments;

9 (4) Acquire (by purchase, gift or otherwise), hold, use and
10 dispose of real and personal property, deeds, mortgages and
11 other instruments;

12 (5) Promulgate and enforce bylaws, rules and regulations
13 for the management and conduct of its affairs;

14 (6) Retain and employ legal, accounting, financial and in-
15 vestment advisors and consultants;

16 (7) Acquire (by purchase, gift or otherwise), hold, exchange,
17 pledge, lend and sell or otherwise dispose of securities, and
18 invest funds in interest earning deposits;

19 (8) Maintain accounts with banks, securities dealers and
20 financial institutions both within and outside this state;

21 (9) Engage in financial transactions whereby securities are
22 purchased by the board under an agreement providing for the
23 resale of such securities to the original seller at a stated price;

24 (10) Engage in financial transactions whereby securities
25 held by the board are sold under an agreement providing for
26 the repurchase of such securities by the board at a stated
27 price;

28 (11) Consolidate and manage moneys, securities and other
29 assets of the pension funds and other funds and accounts of
30 the state and the moneys of political subdivisions which may
31 be made available to it under the provisions of this article;

32 (12) Enter into agreements with political subdivisions of
33 the state whereby moneys of such political subdivisions are
34 invested on their behalf by the board;

35 (13) Charge and collect administrative fees from political
36 subdivisions for its services; and

37 (14) Exercise all powers generally granted to and exer-
38 cised by the holders of investment securities with respect to
39 management thereof.

§12-6-6. Costs and expenses; fees for services.

1 All costs and expenses of the board including fees of
2 professional consultants, advisors and auditors, brokerage
3 commissions and all other necessary expenses of the board
4 incurred in the performance of its functions shall be proper
5 charges against, and payable on a pro rata basis from, the
6 earnings of the various funds managed by the board.

7 The fees collected by the board for its services to political
8 subdivisions shall be deposited in the general revenue fund
9 of this state.

§12-6-7. Legal status of agencies and boards continued.

1 Except as otherwise provided in this article, every state
2 agency or board shall continue to have all of the powers and
3 shall exercise all of the functions and duties vested in or im-

4 posed upon it by law, as to any fund, and shall continue to
5 be constituted as provided by existing law.

§12-6-8. Investment funds established; management thereof.

1 (a) There is hereby established a special investment fund
2 to be managed by the board and designated as the "consoli-
3 dated pension fund" for the common investment of pension
4 funds. All administrators, custodians or trustees of the various
5 pension funds are hereby authorized to make moneys available
6 to the board for investment. Pension funds received by the
7 board shall be deposited in the consolidated pension fund. Any
8 security deposited by the various pension funds shall be valued
9 at the prevailing market price on the day of deposit.

10 (b) There is hereby also established a special investment
11 fund to be managed by the board and designated as the "con-
12 solidated fund". The consolidated fund shall consist of a spe-
13 cial account for the common investment of state funds desig-
14 nated as the "state account" and a special account for the com-
15 mon investment of local government funds designated as the
16 "local government account". Moneys in both accounts may be
17 combined for the common investment of the consolidated fund
18 on an equitable basis.

19 (c) Each board, commission, department, official or agency
20 charged with the administration of state funds is hereby autho-
21 rized to make moneys available to the board for investment.
22 State funds received by the board shall be deposited in the state
23 account.

24 (d) Each political subdivision of this state through its
25 treasurer or equivalent financial officer is hereby authorized to
26 enter into agreements with the board for the investment of
27 moneys of such political subdivision: *Provided*, That it first
28 be determined by the treasurer for such political subdivision
29 that the available interest rate offered by an acceptable de-
30 pository in such treasurer's county be less than the interest
31 rate, net of administrative fees referred to in article six, chapter
32 twelve of this code, offered it through the state board of in-
33 vestments. Local government funds received by the board
34 pursuant to such agreements shall be deposited in the local
35 government account.

36 (e) Each county board of education through its treasurer
37 is hereby authorized to enter into agreements with the
38 board of investments for the investment of moneys of such
39 county board of education: *Provided, however,* That it
40 first be determined by the treasurer for such county board
41 of education that the available interest rate offered by an
42 acceptable depository in such treasurer's county be less
43 than the interest rate, net of administrative fees referred
44 to in article six, chapter twelve of this code, offered it
45 through the state board of investments.

46 (f) Moneys held in the various funds and accounts ad-
47 ministered by the board shall be invested as permitted in
48 section nine and subject to the restrictions contained in section
49 ten of this article. The board shall maintain records of the
50 deposits and withdrawals of each participant and the per-
51 formance of the various funds and accounts. The board shall
52 also establish such rules and regulations for the administration
53 of the various funds and accounts established by this section
54 as it shall deem necessary for the administration thereof, in-
55 cluding but not limited to (1) the specification of minimum
56 amounts which may be deposited in any fund or account and
57 minimum periods of time for which deposits will be retained;
58 (2) creation of reserves for losses; (3) provision for payment of
59 expenses from earnings; and (4) distribution of the earnings
60 in excess of such expenses or allocation of losses to the
61 several participants in an equitable manner: *Provided,* That
62 in the event any moneys made available to the board may not
63 lawfully be combined for investment or deposited in the
64 consolidated funds established by this section, the board may
65 create special accounts and may administer and invest such
66 moneys in accordance with the restrictions specially applicable
67 thereto.

§12-6-9. Permissible investments.

1 Notwithstanding the restrictions which may otherwise be
2 provided by law as to the investment of funds, the board may
3 invest funds made available to it in any of the following:

4 (a) Any direct obligation of, or obligation guaranteed as
5 to the payment of both principal and interest by, the United
6 States of America;

7 (b) Any evidence of indebtedness issued by any of the
8 following agencies: Government National Mortgage Associa-
9 tion, Federal Land Banks, Federal Home Loan Banks, Federal
10 Intermediate Credit Banks, Banks for Cooperatives, Tennessee
11 Valley Authority, United States Postal Service, Farmers Home
12 Administration, Export-Import Bank, Federal Financing Bank,
13 Federal Home Loan Mortgage Corporation and Student Loan
14 Marketing Association;

15 (c) Any evidence of indebtedness issued by the Federal
16 National Mortgage Association to the extent such indebtedness
17 is guaranteed by the Government National Mortgage Associa-
18 tion;

19 (d) Any evidence of indebtedness that is secured by a first
20 lien deed of trust or mortgage upon real property situate within
21 this state, if the payment thereof is substantially insured or
22 guaranteed by the United States of America or any agency
23 thereof;

24 (e) Direct and general obligations of this state;

25 (f) Any undivided interest in a trust, the corpus of which
26 is restricted to mortgages on real property and, unless all of
27 such peroperty is situate within the state and insured, such trust
28 at the time of the acquisition of such undivided interest, is rated
29 in one of the three highest rating grades by an agency which is
30 nationally known in the field of rating pooled mortgage trusts;

31 (g) Any bond, note, debenture, commercial paper or other
32 evidence of indebtedness of any private corporation or asso-
33 ciation organized and operating in the United States: *Provided*,
34 That any such security is, at the time of its acquisition, rated in
35 one of the three highest rating grades by an agency which is
36 nationally known in the field of rating corporate securities:
37 *Provided, however*, That if any commercial paper and/or any
38 such security will mature within one year from the date of its
39 issuance, it shall, at the time of its acquisition, be rated in one
40 of the two highest rating grades by such an agency: *Provided*
41 *further*, That any such security not rated in one of the two
42 highest rating grades by any such agency and commercial
43 paper or other evidence of indebtedness of any private
44 corporation or association shall be purchased only upon the

45 written recommendation from an investment adviser that
46 has over three hundred million dollars in other funds under its
47 management;

48 (h) Negotiable certificates of deposit issued by any bank,
49 trust company, national banking association or savings in-
50 stitution organized and operating in the United States, which
51 mature in less than one year and are fully collateralized; and

52 (i) Interest earning deposits including certificates of de-
53 posit, with any duly designated state depository, which de-
54 posits are fully secured by a collaterally secured bond as pro-
55 vided in section four, article one of this chapter.

§12-6-10. Restrictions on investments.

1 Moneys on deposit in the consolidated fund and the con-
2 solidated pension fund shall be invested as permitted by
3 section nine of this article subject to the restrictions and
4 conditions contained in this section:

5 (1) At no time shall more than seventy-five percent of
6 the portfolio of either fund be invested in securities described
7 in subdivision (g) of said section nine;

8 (2) At no time shall more than twenty percent of the
9 portfolio of either fund be invested in securities described
10 in said subdivision (g) which mature within one year from
11 the date of issuance thereof;

12 (3) At no time shall more than three percent of the
13 portfolio of either fund be invested in securities issued by a
14 single private corporation or association, including for purposes
15 of computation, all consolidated subsidiaries of such corpora-
16 tion or association.

17 For the purpose of making the computations required by this
18 section, securities shall be valued in accordance with generally
19 accepted accounting principles.

§12-6-11. Apportionment of interest earning deposits among state depositories; interest rate on such deposits.

1 Whenever the board determines that funds should be in-
2 vested in interest earning deposits, including certificates of

3 deposit, with depositories eligible in this state to receive such
4 deposits, it shall equitably apportion its offering of such funds
5 among all such depositories in this state. The board shall
6 make such apportionment by considering first the total assessed
7 value of all property within each county, and as to the dis-
8 tribution of the offering within the county, by considering
9 the net loans outstanding of each bank and the mortgage loans
10 (exclusive of mortgage participations) of each state and federal
11 savings and loan association as set forth in the banking com-
12 missioner's most recent annual report of financial institutions.

13 The annual rate of interest on funds placed in interest
14 earning deposits with state depositories, including certificates
15 of deposit, shall be determined by the board and may be
16 adjusted by it from time to time according to the then pre-
17 vailing rate of interest. The board may offer such deposits
18 to state depositories at a rate less than the prevailing rate of
19 interest if it determines that such action will foster economic
20 development in the state.

**§12-6-12. Investment policy; duties of board and state treasurer;
standard of care.**

1 The board shall establish policy guidelines for the invest-
2 ment of moneys on deposit in each of the funds managed
3 by the board based on the needs of the participants in the
4 various funds: *Provided*, That the board shall review such in-
5 vestments at least every three months and may require the
6 purchase or sale of any investments. In order to effectuate its
7 investment policies, the board may require from each partici-
8 pant a schedule, on an annual or more frequent basis, of
9 anticipated deposits and withdrawals.

10 The office of the state treasurer shall administer the in-
11 vestment of each of such funds subject at all times to the policy
12 guidelines established by the board.

13 Any investment made under this article shall be made with
14 the exercise of that degree of judgment and care, under cir-
15 cumstances then prevailing, which men of experience, pru-
16 dence, discretion and intelligence exercise in the management
17 of their own affairs, not for speculation but for investment, con-

18 sidering the probable safety of their capital as well as the
19 probable income to be derived.

§12-6-13. Board as sole agency for investments; exceptions.

1 All duties vested by law in any agency, commission, of-
2 ficial or other board of the state relating to the investment
3 of moneys, and the acquisition, sale, exchange or disposal of
4 securities or any other investment are hereby transferred to
5 the board, and the board shall be the sole agency for the
6 investment of pension funds and state funds: *Provided*, That
7 neither this section nor any other section of this article shall
8 apply to the "board of the school fund" and the "school fund"
9 established by section 4 of Article XII of the State Constitution
10 or the state municipal bond commission.

§12-6-14. Reports of board.

1 The board shall prepare annually, or more frequently if
2 deemed necessary by the board, a report of its operations
3 and the performance of the various funds administered by it.
4 A copy thereof shall be furnished to the chief financial officer
5 of each participant, the president of the senate, speaker of
6 the house, legislative auditor, and upon request to any legisla-
7 tive committee, any banking institution or state or federal
8 savings and loan association in this state, and any member of
9 the news media, and such report shall be kept available for
10 inspection by any citizen of this state.

§12-6-15. Audits.

1 There shall be a continuous postaudit conducted by the
2 legislative auditor of the investment transactions of the board,
3 and a copy thereof for the preceding calendar year shall be
4 furnished to each member of the Legislature on or before the
5 first day of February of each year.

§12-6-16. Existing investments.

1 The board shall not be required to dispose of any securities
2 or other investments lawfully held by it as of the effective
3 date of this article.

§12-6-17. Severability of provisions.

1 If any provision of this article, or the applicability thereof

2 to any person or circumstance, is held invalid, the remainder
3 of this article and the applicability thereof and of such pro-
4 vision to other persons or circumstances shall not be affected
5 thereby.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6a. County board of education treasurer authorized to make funds available to state board of investments; allocation of income.

1 Notwithstanding any other provision of this code, when it
2 appears to any of the various county boards of education that
3 funds on deposit in its demand deposit account exceed the
4 current requirements or demands, and it further be deter-
5 mined by the treasurer for such county board of education
6 that the available interest rate offered by an acceptable de-
7 pository in such treasurer's county be less than the interest
8 rate, net of administrative fees referred to in article six, chap-
9 ter twelve of this code, offered it through the state board of
10 investments, the county board of education treasurer may,
11 with the approval in writing of each county board of education
12 whose funds are involved, make such funds available to the
13 state board of investments for investment in accordance with
14 the provisions of said article six, chapter twelve of the code.

15 Any income earned on such investment shall be allocated by
16 such treasurer to the board of education whose funds were
17 made available, such allocation to be made in accordance
18 with the accounting and allocation principles established by
19 the board of investments.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 1. LEGISLATIVE ACTS AND RESOLUTIONS; PUBLIC RECORDS.

§57-1-7a. Use of photographic copies in evidence; state records, papers or documents; destruction or transfer to archives of originals; destruction of canceled checks and paid and canceled bonds and coupons.

1 Any public officer of the state may, with the approval of
2 the board of public works, cause any or all records, papers or

3 documents kept by him to be photographed, microphoto-
4 graphed or reproduced on film. Such photographic film shall
5 be of durable material and the device used to reproduce such
6 records on such film shall be one which accurately reproduces
7 the original thereof in all details.

8 Such photographs, microphotographs or photographic film
9 shall be deemed to be an original record for all purposes, in-
10 cluding introduction in evidence in all courts or administrative
11 agencies. A transcript, exemplification or certified copy there-
12 of shall, for all purposes recited herein, be deemed to be a
13 transcript, exemplification or certified copy of the original.
14 Whenever photographs, microphotographs or reproductions on
15 film have been made and put in conveniently accessible fire-
16 proof files, and provision has been made for preserving,
17 examining and using the same, the respective heads of the
18 departments, divisions, institutions and agencies of the state
19 may, with the approval of the board of public works, cause
20 the records and papers so photographed, microphotographed
21 or reproduced on film, or any part thereof, to be destroyed;
22 but before any such records, papers or documents are autho-
23 rized to be destroyed, the board of public works shall obtain the
24 advice and counsel of the state historian and archivist, or his
25 designated representative, as to the desirability of placing the
26 said records, papers and documents in the archives of that
27 department, whereupon the board of public works may cause
28 such records, papers and documents to be so transferred: *Pro-*
29 *vided*, That the state treasurer may at his discretion destroy any
30 canceled checks of the state after ten years have elapsed since
31 the date of the check, whether or not such checks have been
32 photographed, microphotographed or reproduced on film:
33 *Provided, however*, That any canceled bonds or interest cou-
34 pons of any bond issues of this state in the custody of the
35 treasurer, or for which the treasurer acts as fiscal agent or
36 paying agent, may at his discretion be destroyed by one of the
37 two methods described below:

38 *Method 1*—The treasurer shall maintain a permanent
39 record for the purpose of recording the destruction of bonds
40 and coupons, showing the following: (1) With respect to bonds,
41 the purpose of issuance, the date of issue, denomination, ma-

42 turity date, and total principal amount; and (2) with respect to
43 coupons, the purpose of issue and date of the bonds to which
44 the coupons appertain, the maturity date of the coupons, and,
45 as to each maturity date, the denomination, quantity and total
46 amount of coupons.

47 After recording the specified information, the treasurer
48 shall have the canceled bonds and coupons destroyed either
49 by burning or shredding, in the presence of an employee of the
50 treasurer and an employee of the legislative auditor, each of
51 whom shall certify that he saw the canceled bonds and cou-
52 pons destroyed. Such certificates shall be made a part of the
53 permanent record. Canceled bonds or coupons shall not be
54 destroyed until after one year from the date of payment.

55 *Method II*—The treasurer may contract with any bank
56 or trust company acting as paying agent or copaying agent for
57 a bond issue of the state for the destruction of bonds and in-
58 terest coupons which have been canceled by the paying agent.
59 The contract shall require that the paying agent give the
60 treasurer a written certificate containing the same information
61 required by Method I. Such certificate shall include a sworn
62 statement that the described bonds or coupons have been de-
63 stroyed. The certificate shall be made a part of the trea-
64 surer's permanent record.

65 Each contract shall also require that the paying agent be
66 responsible for proper payment and disposition of all bonds
67 and coupons, and for any duplicate payments to unauthorized
68 persons and nonpayment to authorized persons occurring as a
69 result of destruction of bonds or coupons under this section.
70 In addition, the treasurer may require the paying agent to sub-
71 mit an indemnity bond, in an amount to be determined by the
72 treasurer, to assure performance of the duties specified in this
73 section. Canceled bonds or coupons may not be destroyed
74 until one year from the date of payment.

75 For purposes of this section, the term "bonds" shall include
76 interim certificates.

CHAPTER 59

(Com. Sub. for H. B. 764—By Mr. See and Mr. Milleson)

[Passed March 6, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to jury commissioners for petit juries; provided that persons who have previously been appointed jury commissioners are eligible for reappointment if their appointments are not for consecutive terms; and providing that a jury commissioner in a Class V, Class VI or Class VII county, as defined in section three, article seven, chapter seven of the code, shall be eligible to succeed himself for one additional four-year term.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PETIT JURIES.

§52-1-3. Jury commissioners; appointment and qualifications; term; removal; vacancies; compensation; oath; powers and duties generally.

1 There shall be two jury commissioners of the circuit court of
 2 each county. They shall be of opposite politics, citizens of good
 3 standing, residents in the county for which they are appointed,
 4 and well-known members of the principal political parties
 5 thereof; the chairman of a political party shall be ineli-
 6 gible to appointment, and no jury commissioner, after having
 7 served four years, shall be eligible to succeed himself in
 8 such office: *Provided*, That a jury commissioner in a Class
 9 V, Class VI or Class VII county, as defined in section three,
 10 article seven, chapter seven of this code, shall be eligible for
 11 appointment to succeed himself for one four-year term in such
 12 office.

13 Jury commissioners shall be appointed by the circuit court,

14 or the chief judge thereof, of their respective counties. The
 15 terms of office shall be four years and shall commence on the
 16 first day of June following appointment.

17 Those jury commissioners appointed by the circuit court
 18 or the chief judge thereof, in office when this section takes
 19 effect, shall continue in office unless removed, until the ex-
 20 piration of their respective terms of office, and their successors
 21 shall be appointed, as aforesaid, alternately, so that a period
 22 of two years shall intervene between the dates when the terms
 23 of office of the two commissioners shall begin and expire.

24 Jury commissioners may be removed from office by the cir-
 25 cuit court, or the chief judge thereof, for official misconduct,
 26 incompetency, habitual drunkenness, neglect of duty or gross
 27 immorality. Vacancies caused by death, resignation or other-
 28 wise shall be filled for the unexpired term in the same manner
 29 as the original appointments.

30 Jury commissioners shall receive as compensation for their
 31 services, while necessarily employed, an amount to be fixed
 32 by the judge of the circuit court, or the chief judge thereof,
 33 in accordance with rules of the supreme court of appeals, which
 34 shall be payable out of the state treasury upon orders of the
 35 circuit court or the chief judge thereof.

36 Before entering upon the discharge of his duties, a jury
 37 commissioner shall take and subscribe, before the clerk of the
 38 circuit court, who is hereby authorized to administer the same,
 39 an oath, to be filed and preserved by him in his office, to the
 40 following effect:

41 State of West Virginia,

42 County of _____, to wit:

43 I, A _____ B _____,
 44 do solemnly swear that I will support the Constitution of the
 45 United States and the Constitution of this State and will faith-
 46 fully discharge the duties of jury commissioner to the best of
 47 my skill and judgment, and that I will not place any person
 48 upon the jury list in violation of law, or out of fear, favor or
 49 affection.

CHAPTER 60

(Com. Sub. for H. B. 1368—By Mr. Mowery and Mr. Tompkins)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty, relating to a landlord's duty to maintain leased premises in fit and habitable condition.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty-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 thirty, to read as follows:

ARTICLE 6. LANDLORD AND TENANT.

§37-6-30. Landlord to deliver premises; duty to maintain premises in fit and habitable condition.

- 1 With respect to residential property:
- 2 (a) A landlord shall:
 - 3 (1) At the commencement of a tenancy, deliver the dwell-
 - 4 ing unit and surrounding premises in a fit and habitable
 - 5 condition, and shall thereafter maintain the leased property
 - 6 in such condition; and
 - 7 (2) Maintain the leased property in a condition that meets
 - 8 requirements of applicable health, safety, fire and housing
 - 9 codes, unless the failure to meet those requirements is the
 - 10 fault of the tenant, a member of his family or other person
 - 11 on the premises with his consent; and
 - 12 (3) In multiple housing units, keep clean, safe and in
 - 13 repair all common areas of the premises remaining under his
 - 14 control that are maintained for the use and benefit of his
 - 15 tenants; and

16 (4) Make all repairs necessary to keep the premises in a
17 fit and habitable condition, unless said repairs were necessi-
18 tated primarily by a lack of reasonable care by the tenant,
19 a member of his family or other person on the premises
20 with his consent; and

21 (5) Maintain in good and safe working order and condition
22 all electrical, plumbing, sanitary, heating, ventilating, air-
23 conditioning and other facilities and appliances, including
24 elevators, supplied or required to be supplied by him by
25 written or oral agreement or by law; and

26 (6) In multiple housing units, provide and maintain ap-
27 propriate conveniences for the removal of ashes, garbage,
28 rubbish and other waste incidental to the occupancy of the
29 dwelling unit; and

30 (7) With respect to dwelling units supplied by direct public
31 utility connections, supply running water and reasonable
32 amounts of hot water at all times, and reasonable heat be-
33 tween the first day of October and the last day of April,
34 except where the dwelling unit is so constructed that running
35 water, heat or hot water is generated by an installation
36 within the exclusive control of the tenant.

37 (b) If a landlord's duty under the rental agreement exceeds
38 a duty imposed by this section, that portion of the rental
39 agreement imposing a greater duty shall control.

40 (c) None of the provisions of this section shall be deemed
41 to require the landlord to make repairs when the tenant is in
42 arrears in payment of rent.

43 (d) For the purposes of this section, the term "multiple
44 housing unit" shall mean a dwelling which contains a room
45 or group of rooms located within a building or structure
46 forming more than one habitable unit for occupants for
47 living, sleeping, eating and cooking.

CHAPTER 61

(Com. Sub. for H. B. 1238—By Mr. Tucker and Mr. Farley)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the creation of a legislative commission on pensions and retirement; providing for terms and method of appointment of members to commission; enumerating powers and duties of commission; providing for funding of commission and reimbursement of members for expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT.

- §4-9-1. Definition.
- §4-9-2. Creation of commission.
- §4-9-3. Powers and duties.
- §4-9-4. Appointment of members; terms.
- §4-9-5. Time and place of meetings; officers.
- §4-9-6. Staff.
- §4-9-7. Assistance of other agencies.
- §4-9-8. Members' expenses; reimbursement.

§4-9-1. Definition.

- 1 "Commission" as used in this article means the legislative
- 2 commission on pensions and retirement.

§4-9-2. Creation of commission.

- 1 There is hereby created a permanent commission to con-
- 2 tinually study and investigate public retirement systems. The
- 3 name of the commission shall be the legislative commission
- 4 on pensions and retirement.

§4-9-3. Powers and duties.

1 The commission shall make a continuing study and investi-
2 gation of retirement benefit plans applicable to nonfederal
3 government employees in this state. The powers and duties
4 of the commission shall include, but not be limited to, the
5 following:

6 (a) Study of retirement benefit plans applicable to non-
7 federal government employees in the state of West Virginia,
8 including, without limitation, federal plans available to such
9 employees;

10 (b) Making of recommendations within the scope of the
11 study with particular attention to financing of the various
12 pension funds and financing of accrued liabilities;

13 (c) Consideration of all aspects of pension planning and
14 operation, and making of recommendations designed to
15 establish and maintain sound pension policy as to all funds;

16 (d) Filing of a report to each regular session of the
17 Legislature;

18 (e) Analyzing of each item of proposed pension and retire-
19 ment legislation, including amendments thereto, with particular
20 reference to analysis as to cost, actuarial soundness, and ad-
21 herence to sound pension policy, and reporting of its findings
22 in regard thereto to the Legislature; and

23 (f) Maintenance of reference materials concerning pension
24 and retirement matters, including, without limitation, informa-
25 tion as to laws and systems in other states.

§4-9-4. Appointment of members; terms.

1 The commission shall consist of three members of the
2 Senate to be appointed by the president of the Senate and
3 three members of the House of Delegates to be appointed by
4 the Speaker of the House, and the governor shall appoint
5 three members, one from labor, one from the business com-
6 munity and one from the general public. No more than two
7 of the three members appointed by the President of the Senate

8 and the Speaker of the House, respectively, may be members
9 of the same political party. The first appointed members
10 of the commission shall serve for a term expiring on the
11 thirtieth day of June in the year of the next succeeding regular
12 session of the Legislature. At the commencement of such
13 next succeeding regular session and at the commencement of
14 regular sessions every two years thereafter, members of the
15 commission shall be appointed for two year terms beginning
16 the first day of July in the year of each such regular session.
17 Vacancies on the commission shall be filled for unexpired
18 terms in the same manner as appointments to the commission.

§4-9-5. Time and place of meetings; officers.

1 The commission shall hold meetings at such times and
2 places as it may designate. It shall select a chairman, a vice
3 chairman and such other officers from its membership as it
4 may deem necessary.

§4-9-6. Staff.

1 The commission may employ such professional, clerical and
2 technical assistants as it deems necessary in order to perform
3 the duties herein prescribed.

§4-9-7. Assistance of other agencies.

1 The commission may request information from any state
2 officer or agency in order to assist in carrying out the terms
3 of this article, and such officer or agency is authorized and
4 directed to promptly furnish any data requested.

§4-9-8. Members' expenses; reimbursement.

1 The members of the commission and its assistants shall
2 be reimbursed for all expenses actually and necessarily in-
3 curred in the performance of their duties hereunder from
4 the fund of the joint committee on government and finance.
5 Compensation and other expenses of the commission may
6 be paid from the fund of the joint committee on government
7 and finance.

CHAPTER 62

(S. B. 167—By Mr. Hamilton)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three of said chapter by adding thereto a new section, designated section two; to amend article four by adding thereto a new section, designated section four; to amend and reenact sections one, two, three, four, six and eight, article five of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section one, article eleven of said chapter; and to amend and reenact section thirty-one, article five, chapter twenty-eight of said code, all relating to commitment and treatment of the mentally ill, mentally retarded and addicted; redefining the term "mental health facility"; definitions; authorization of disclosure of confidential information; right to release from voluntary hospitalization upon application therefor; admission and treatment of voluntary patients; statement of rights; consent for treatment; involuntary commitment; involuntary hospitalization; probable cause hearings; custody for medical examination; legal proceedings for involuntary hospitalization; examination of newly admitted patients; examination by a psychologist; periodic examination and review of patient's hospitalization; consideration of evidence in habeas corpus proceeding; appeal procedures; appointment of committees; appointment of guardian ad litem; not requiring presence of individual under certain conditions; treatment of mentally diseased convicts; transfer between penal and mental health facilities and penal facility procedures; and hearing procedures required.

Be it enacted by the Legislature of West Virginia:

That sections nine and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred

thirty-one as amended, be amended and reenacted; that article three of said chapter be amended by adding thereto a new section, designated section two; that article four of said chapter be amended by adding thereto a new section, designated section four; that sections one, two, three, four, six and eight, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; that section one, article eleven of said chapter be amended and reenacted; and that section thirty-one, article five, chapter twenty-eight of said code be amended and reenacted, all to read as follows:

Chapter

27. Mentally Ill Persons.

28. State Correctional and Penal Institutions.

CHAPTER 27. MENTALLY ILL PERSONS.

Article

- 1. Words and Phrases Defined.**
- 3. Confidentiality.**
- 4. Voluntary Hospitalization.**
- 5. Involuntary Hospitalization.**
- 11. Committee; Disposition of Property.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-9. Mental health facility.

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

§27-1-9. Mental health facility.

1 "Mental health facility" means any inpatient, residential
 2 or outpatient facility for the care and treatment of the
 3 mentally ill, mentally retarded or addicted which is
 4 operated, or licensed to operate, by the department of
 5 health and shall include state hospitals as defined in
 6 section six of this article. The term shall also include
 7 veterans administration hospitals.

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

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

- 3 (1) A substantial tendency to physically harm himself
- 4 which is manifested by threats of or attempts at suicide
- 5 or serious bodily harm or other conduct, either active or

6 passive, which demonstrates that he is dangerous to him-
7 self; or

8 (2) A substantial tendency to physically harm other
9 persons which is manifested by homicidal or other violent
10 behavior which places others in reasonable fear of serious
11 physical harm; or

12 (3) A complete inability to care for himself by reason
13 of mental retardation.

ARTICLE 3. CONFIDENTIALITY.

**§27-3-2. Authorization of disclosure of confidential informa-
tion.**

1 No consent or authorization for the transmission or dis-
2 closure of confidential information shall be effective unless
3 it is in writing and signed by the patient or client by his
4 legal guardian. Every person signing an authorization
5 shall be given a copy.

6 Every person requesting such authorization shall inform
7 the patient, client or authorized representative that re-
8 fusal to give such authorization will in no way jeopardize
9 his right to obtain present or future treatment except
10 where and to the extent disclosure is necessary for treat-
11 ment of said patient or client or for the substantiation
12 of a claim for payment from a person other than the
13 patient or client.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

**§27-4-4. Admission and treatment of voluntary patients; state-
ment of rights; consent for treatment.**

1 (a) No person shall be admitted as an inpatient into a
2 mental health facility as a voluntary patient until such
3 person has been told and has received a written state-
4 ment containing in bold print a statement that once he
5 voluntarily admits himself into such facility, his release
6 may not be voluntary, that the facility may seek to in-
7 voluntarily commit him and may hold him against his
8 will for thirty days pending a hearing and indefinitely
9 after the hearing if he is committed, and that such state-
10 ment shall inform the individual that he may request

11 release at any time. Further, the individual shall be
 12 advised in writing of his rights upon admission as an
 13 inpatient to a mental health facility, including, but not
 14 limited to, those rights afforded pursuant to section nine,
 15 article five of this chapter. A copy of the statement shall
 16 be filed in the individual's permanent records and shall
 17 contain the name of the person who made the oral and
 18 written disclosure.

19 (b) No voluntary inpatient shall be subjected to any
 20 course of treatment without such patient's written con-
 21 sent. Such consent shall be revocable at any time and
 22 shall not be valid for a period exceeding six months.

23 (c) One person in every mental health facility shall be
 24 designated as the voluntary patient coordinator. Such
 25 coordinator, or his designee while the coordinator is not
 26 on duty, shall be responsible for the disclosures required
 27 by this section and for any and all discussions with volun-
 28 tary patients relative to release.

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; hearings; release.

§27-5-2a. Probable cause hearing.

§27-5-3. Custody for medical examination.

§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.

§27-5-8. Periodic examination and review of patient's hospitalization; appeal procedures for release of patient from hospitalization.

§27-5-1. Involuntary commitment; hearing; appointment of mental hygiene commissioner; caseworker defined.

1 No individual shall be involuntarily committed to a
 2 mental health facility except by order entered of record
 3 at any time by the circuit court of the county wherein
 4 such person resides or was found and then only after a
 5 full hearing on the issues relating to the necessity of com-
 6 mitting an individual to a mental health facility. The
 7 circuit court of each county shall appoint a competent
 8 attorney and, if necessary, one additional attorney to

9 serve as an alternate in each county to preside over such
10 hearings, who shall be designated "mental hygiene com-
11 missioner." He shall be a person of good moral character
12 and of standing in his profession and he shall, before as-
13 suming the duties of such commissioner, take the oath
14 required of other special commissioners as provided in
15 article one, chapter six of this code. The mental hygiene
16 commissioner may sign and issue summons for the at-
17 tendance, at any hearing held pursuant to section four,
18 article five of this chapter, of the individual sought to be
19 committed; may sign and issue subpoenas for witnesses,
20 including subpoenas duces tecum; may place any witness
21 under oath; and may make findings of fact on evidence
22 and may make conclusions of law, but such findings and
23 conclusions shall not be binding on the circuit court. The
24 circuit court by order entered of record shall allow the
25 commissioner a reasonable fee for his services in connec-
26 tion with each case. The mental hygiene commissioner
27 shall discharge his duties and hold his office at the pleasure
28 of the circuit court by which he is appointed and may
29 be removed at any time by the court. It shall be the duty
30 of the mental hygiene commissioner to conduct orderly
31 inquiries into the mental health of any individual brought
32 before him concerning the advisability of committing the
33 individual to a mental health facility. The mental hygiene
34 commissioner shall safeguard, at all times, the rights and
35 interests of the individual as well as the interests of the
36 state. The mental hygiene commissioner shall make a
37 written report of his findings to the circuit court. In any
38 proceedings before any court of record as set forth in
39 this article, the court of record shall appoint an inter-
40 preter for any individual who is deaf or cannot speak
41 or who speaks a foreign language and who may be subject
42 to involuntary commitment to a mental health facility.

43 In all proceedings under this article, it shall be the
44 duty of the prosecuting attorney or one of his assistants
45 to represent the applicants.

46 Upon written order of the circuit court or the mental
47 hygiene commissioner of the county where the individual
48 formally accused of being mentally incompetent, mentally

49 retarded or addicted is a resident or is found, the sheriff
50 of that county shall take said individual into custody
51 and transport him to and from the place of hearing and
52 the mental health facility.

53 As used in this article, the term "caseworker" means a
54 person employed by a mental health facility, state hos-
55 pital, county health department or the state department
56 of welfare, as an agent for the providing of the social
57 or medical services, or both, of such facility, hospital or
58 department.

**§27-5-2. Involuntary hospitalization; admission by medical
certification; emergency procedure; examination;
hearings; release.**

1 (a) Any individual may be admitted to a mental health
2 facility upon:

3 (1) Written application under oath to the facility by
4 any adult person and certification by two physicians or
5 a physician and a psychologist that they have examined
6 the individual and that they are of the opinion that he
7 is mentally ill, mentally retarded or addicted and be-
8 cause of his mental illness, mental retardation or addiction
9 he is likely to cause serious harm to himself or others if
10 he is allowed to remain at liberty. Admission to a mental
11 health facility in accordance with the procedure set
12 forth in this subdivision shall be referred to as a medical
13 certification admission; or

14 (2) Written application under oath to the facility by
15 a health officer, caseworker or law-enforcement officer
16 stating his belief that the individual, because of symptoms
17 of mental illness, mental retardation or addiction, is
18 likely to cause serious harm to himself or others if not
19 immediately restrained and the grounds for such belief
20 and certification by at least one physician or one psy-
21 chologist that he has examined the individual and that
22 he is of the opinion the individual is mentally ill, mentally
23 retarded or addicted and because of his mental illness,
24 mental retardation or addiction he is likely to cause
25 serious harm to himself or others if not immediately
26 restrained. Admission to a mental health facility in

27 accordance with the procedures set forth in this sub-
28 division (2) shall be referred to as an emergency admis-
29 sion.

30 (b) Any individual with respect to whom such certifi-
31 cation has been issued may not be admitted on the basis
32 thereof at any time after the expiration of three days
33 from the date of such examination in the case of emer-
34 gency admission with one physician's or psychologist's
35 certificate in accordance with subdivision (2), subsection
36 (a) of this section or fifteen days from the first examina-
37 tion in the case of medical certification admission in
38 accordance with subdivision (1), subsection (a) of this
39 section. A certification under this section must include
40 findings and conclusions of the mental examination, the
41 date, time and place thereof, and the facts upon which
42 the conclusion of likelihood of causing serious harm is
43 based. The chief medical officer may, with the approval
44 of the director of health, transfer such individual to a
45 state hospital or to another similar type of mental health
46 facility after determining that no less restrictive treat-
47 ment alternative is suitable or available. The chief medi-
48 cal officer of the mental health facility admitting the
49 individual shall forthwith make a report thereof to the
50 director of health.

51 When an individual is admitted to a mental health
52 facility pursuant to the provisions of this section, the
53 chief medical officer thereof shall immediately give notice
54 of the individual's admission to the individual's spouse,
55 if any, and one of the individual's parents or parent
56 or guardian, or if there be no such spouse, parents or
57 guardians to one of the individual's adult next of kin:
58 *Provided*, That such next of kin shall not be the applicant.
59 Notice shall also be given to the community mental health
60 facility, if any, having jurisdiction in the county of
61 the individual's residence. Such notices other than to
62 the community mental health facilities shall be in writing
63 and shall be transmitted to such person or persons at his,
64 her or their last-known address by certified or registered
65 mail, return receipt requested.

66 (c) After the individual's admission to a mental health

67 facility, he shall not be detained more than three days,
68 excluding Sundays and holidays, unless, within such
69 period, the individual is examined by two staff physicians
70 or one staff psychologist and one staff physician and the
71 likelihood that the individual will cause serious harm to
72 himself or others is confirmed by such physicians, or
73 psychologist and physician. No physician or psychologist
74 shall confirm likelihood of serious harm unless recent
75 overt acts alleged in detail in the application clearly
76 demonstrate such likelihood: *Provided*, That no such
77 statement of recent overt acts need be made when the
78 applicant alleges the individual is likely to cause serious
79 harm as a result of having a complete inability to care
80 for himself by reason of mental retardation. The physi-
81 cians, or psychologist and physician may jointly examine
82 the individual but must make separate, independent and
83 signed evaluations of his condition.

84 (d) If, on the basis of the examination by the two staff
85 physicians, or one staff psychologist and one staff physi-
86 cian, the chief medical officer determines that the indi-
87 vidual should continue to be hospitalized, a written re-
88 quest for a hearing shall be sent to the clerk of the
89 circuit court of the county of the individual's residence
90 or to the clerk of the circuit court of the county where
91 he was found within five days after the person's admission.
92 After the request for hearing is filed, the hearing shall
93 not be canceled on the basis that the individual has be-
94 come a voluntary patient unless the mental hygiene com-
95 missioner concurs in the motion for cancellation of the
96 hearing. Within a reasonable time after receipt of the
97 request, the circuit court or mental hygiene commissioner
98 shall conduct a hearing pursuant to section four of this
99 article on the question of the individual's mental health
100 and the need for his further hospitalization, but in no
101 event shall such hearing be held later than twenty days
102 after the admission of the individual to a mental health
103 facility: *Provided*, That on the verified motion of the
104 individual, the hearing may be continued for a period
105 of time not to exceed ten days.

106 (e) Unless he chooses to change his status to that of

107 voluntary hospitalization, an individual hospitalized pur-
108 suant to this section shall be released without fail:

109 (1) Within three days after his admittance to a mental
110 health facility, unless he has been examined by two staff
111 physicians or one staff psychologist and one staff physi-
112 cian, both of whom confirm in writing that the individual
113 is likely to cause serious harm to himself or others if not
114 immediately restrained; or

115 (2) Within the time prescribed by section two-a of
116 this article, unless the individual has been afforded a
117 probable cause hearing and a determination and order
118 made as prescribed therein; or

119 (3) Within three days after a probable cause hearing,
120 unless the chief medical officer has sent a written request
121 within such time to the clerk of the circuit court of the
122 county of which the individual is a resident or where he
123 was found for a hearing on the question of the individual's
124 mental condition and the need for further hospitalization;
125 or

126 (4) Within twenty days after his admittance to a
127 mental health facility, unless a hearing has been con-
128 ducted pursuant to the provisions regarding legal pro-
129 ceedings for involuntary hospitalization and a determina-
130 tion and order have been made as prescribed therein on
131 the question of the individual's mental condition or unless
132 the individual has obtained a continuance not to exceed
133 ten days. If the individual has been afforded a timely
134 probable cause hearing in accordance with section two-a
135 of this article, such period shall be thirty days after
136 admittance.

§27-5-2a. Probable cause hearing.

1 The individual may not be detained pursuant to sec-
2 tion two of this article for a period exceeding seventy-
3 two hours, excluding Sundays and holidays, unless
4 within such period a probable cause hearing is held
5 before the mental hygiene commissioner or circuit judge
6 of the county of which the individual is a resident
7 or where he was found, or if the individual is hos-

8 pitalized in a mental health facility located in a
9 county other than where he resides or was found, in
10 the county of the mental health facility. If requested
11 by the detained individual or his counsel, the hearing
12 may be postponed for a period not to exceed forty-
13 eight hours. The individual must be present at the
14 hearing and has the right to present evidence and to
15 examine testimony offered. The individual has the right
16 to remain silent and to be proceeded against by the
17 rules of evidence. The individual must be appointed
18 counsel, if unable to afford counsel, at least twelve hours
19 prior to the hearing.

20 At the conclusion of the hearing, if the mental hygiene
21 commissioner or circuit court finds that there is probable
22 cause to believe that such individual as a result of
23 mental illness, mental retardation or addiction is likely
24 to cause serious harm to self or others, and further
25 that the individual could not be treated in a less restric-
26 tive alternative than in a state hospital or mental health
27 facility, the commissioner or court may order that such
28 individual be detained in a state hospital or other men-
29 tal health facility pending a hearing pursuant to section
30 four of this article.

§27-5-3. Custody for medical examination.

1 When any person, health officer, caseworker or law-
2 enforcement officer has reason to believe that an in-
3 dividual is mentally ill, mentally retarded or addicted
4 and because of his mental illness, mental retardation
5 or addiction is likely to cause serious harm to himself
6 or others if allowed to remain at liberty while awaiting
7 an examination and certification by a physician, or
8 psychologist, physicians, or physician and psychologist,
9 as the case may be, pursuant to section two of this
10 article, such person, health officer, caseworker or law-
11 enforcement officer may make application under oath,
12 to the circuit court or mental hygiene commissioner
13 of the county of which the individual is a resident or
14 to the circuit court or mental hygiene commissioner
15 of the county where he may be found, giving such

16 information and stating such facts therein as may be
17 required, upon the form provided by the department
18 of health and the circuit court or mental hygiene com-
19 missioner shall thereupon enter an order for the in-
20 dividual named in such application to be taken into
21 custody and detained, but not incarcerated in a jail or
22 penal institution, for the purpose of an examination
23 by at least one physician or psychologist to take place
24 within fourteen hours after the individual is taken into
25 custody. Not later than fourteen hours after the indi-
26 vidual is taken into custody, the individual shall be
27 released from custody, unless proceedings have been
28 instituted pursuant to section two of this article.

§27-5-4. Legal proceedings for involuntary hospitalization.

1 (a) Proceedings for the involuntary hospitalization
2 of an individual may be commenced by the filing of
3 a written application under oath and the certificate
4 or affidavit as hereinafter provided with the clerk of
5 the circuit court or mental hygiene commissioner of
6 the county of which the individual is a resident or
7 with the clerk of the circuit court or mental hygiene
8 commissioner of the county where he may be found,
9 by any adult person having personal knowledge of the
10 facts of the case.

11 Such application shall be made under oath and shall
12 state the belief of the applicant that because of symp-
13 toms of mental illness, mental retardation or addiction,
14 the individual is likely to cause serious harm to him-
15 self or others and the grounds for such belief, stating
16 in detail the recent overt acts upon which such belief
17 is based: *Provided*, That no such statement of recent
18 overt acts need be made when the applicant alleges
19 the individual is likely to cause serious harm as a result
20 of having a complete inability to care for himself by
21 reason of mental retardation. Applications shall not
22 be filed with regard to individuals who are merely
23 epileptics, mentally deficient or senile. The written
24 application, certificate, affidavit and any warrants issued
25 pursuant thereto, including any papers and documents

26 related thereto filed with any circuit court or mental
27 hygiene commissioner for the involuntary hospitaliza-
28 tion of any individual shall not be open to inspection
29 by any person other than the individual, except upon
30 authorization of the individual or his legal representa-
31 tive or by order of the circuit court and such records
32 shall not be published except upon the authorization
33 of the individual or his legal representative. Such
34 applicant shall file with his application the certificate
35 of a physician or a psychologist stating that in his
36 opinion the individual is mentally ill, mentally re-
37 tardated or addicted and that because of his mental ill-
38 ness, mental retardation or addiction, the individual
39 is likely to cause serious harm to himself or others
40 if he is allowed to remain at liberty and therefore he
41 should be hospitalized, stating in detail the recent overt
42 acts upon which such conclusion is based: *Provided*,
43 That no such statement of recent overt acts need be
44 made when the applicant alleges the individual is likely
45 to cause serious harm as a result of having a complete
46 inability to care for himself by reason of mental re-
47 tardation. In lieu of said certificate, an affidavit shall
48 be filed by the applicant showing facts that the indi-
49 vidual has refused to submit to examination by a phy-
50 sician or a psychologist.

51 (b) Upon receipt of an application, the mental
52 hygiene commissioner or circuit court shall review the
53 application and if it is determined that the facts alleged,
54 if any, are sufficient to warrant involuntary hospitaliza-
55 tion, forthwith fix a date for and have the clerk of the
56 circuit court give notice of the hearing (1) to the indi-
57 vidual, (2) to the applicant or applicants, (3) to the
58 individual's spouse, one of the parents or guardians,
59 or if the individual does not have a spouse, parents or
60 parent or guardian, to one of the individual's adult next
61 of kin: *Provided*, That such person is not the applicant,
62 (4) to the mental health authorities serving the area,
63 (5) to the circuit court in the county of the individual's
64 residence if the hearing is to be held in a county other
65 than that of such individual's residence, and (6) to the

66 prosecuting attorney of the county in which the hearing
67 is to be held. Such notice shall be served on the individ-
68 ual by personal service of process not less than eight
69 days prior to the date of the hearing, and shall specify
70 the nature of the charges against the individual; the
71 facts underlying and supporting the application of his
72 involuntary commitment; his right to have counsel ap-
73 pointed for him if he is an indigent; his right to consult
74 with and be represented by counsel at every stage of
75 the proceedings; and the time and place of the hearing.
76 The notice to the individual's spouse, parents or parent
77 or guardian, the individual's adult next of kin, or to
78 the circuit court in the county of the individual's
79 residence may be by personal service of process or
80 by certified or registered mail, return receipt re-
81 quested, and shall state the time and place of the
82 hearing.

83 Within a reasonable time after notice of the com-
84 mencement of proceedings is given, the circuit court or
85 mental hygiene commissioner shall appoint two phy-
86 sicians or a physician and psychologist, other than the
87 physician or psychologist whose certification may have
88 accompanied the application under this section to the
89 circuit court or mental hygiene commissioner, to ex-
90 amine the individual and report to the circuit court
91 or mental hygiene commissioner their findings as to the
92 mental condition of the individual and the likelihood
93 of his causing serious harm to himself or others. The
94 physicians or physician and psychologist may jointly
95 examine the individual, but must make separate, inde-
96 pendent and signed evaluations of this condition stating
97 the facts upon which the conclusions therein are
98 based.

99 If the designated physicians or physician and psy-
100 chologist report to the circuit court or mental hygiene
101 commissioner that the individual has refused to submit
102 to an examination, the circuit court or mental hygiene
103 commissioner shall order him to submit to such exam-
104 ination. The circuit court or mental hygiene commis-
105 sioner may direct that the individual be taken into

106 custody, but not incarcerated in a jail or penal institu-
107 tion, for the purpose of an immediate examination by
108 the designated physicians or physician and psychologist.
109 All such orders shall be directed to the sheriff of the
110 county or other appropriate law-enforcement officer.
111 After such examination has been completed, the indi-
112 vidual shall be released from custody unless such cus-
113 tody is in a mental health facility pursuant to an emer-
114 gency hospitalization as provided for in section two of
115 this article. If the reports of the appointed physician
116 or physicians and psychologists do not confirm that
117 the individual is mentally ill, mentally retarded or
118 addicted and might be harmful to himself or others,
119 then the proceedings for his involuntary hospitalization
120 shall be dismissed.

121 (c) The individual shall be present at the hearing
122 and he, the applicant and all persons entitled to notice
123 of such hearing shall be afforded an opportunity to
124 testify and to present and cross-examine witnesses. In
125 the event that the individual is an indigent person and
126 has not retained counsel, the court or mental hygiene
127 commissioner at least seven days prior to hearing shall
128 appoint a competent attorney, and shall inform the
129 individual of the name, address and telephone number
130 of his appointed counsel. Such counsel shall conduct
131 a timely interview, make investigation and secure ap-
132 propriate witnesses, and shall be present at the hearing
133 and protect the interest of the individual. The circuit
134 court, by order of record, may allow the attorney a
135 reasonable fee not to exceed the amount allowed for
136 attorneys in felony cases by section one, article two,
137 chapter sixty-two of this code. Any counsel representing
138 an individual shall be entitled to copies of all medical
139 reports, psychiatric or otherwise. The individual shall
140 have the right to have an examination by an indepen-
141 dent expert of his choice and testimony from such
142 expert as a medical witness on his behalf. The cost
143 of such independent expert shall be borne by the indi-
144 vidual unless he is indigent. The circuit court or mental
145 hygiene commissioner shall hear evidence from all in-

146 terested parties in chamber, including testimony from
147 representatives of the community mental health facility.
148 The individual shall not be compelled to be a witness
149 against himself. The circuit court or mental hygiene
150 commissioner shall receive all relevant and material
151 evidence which may be offered. The circuit court or
152 mental hygiene commissioner shall be bound by the
153 rules of evidence except that statements made to phy-
154 sicians or psychologists by the individual may be ad-
155 mitted into evidence by the physician's or psychologist's
156 testimony notwithstanding failure to inform the indi-
157 vidual that this statement may be used against him.
158 Any psychologist or physician testifying shall bring all
159 records pertaining to said individual to said hearing.
160 Such medical evidence obtained pursuant to an exam-
161 ination under this section, or section two or section
162 three of this article, is not privileged information for
163 purposes of a hearing pursuant to this section. A tran-
164 script or recording shall be made of all proceedings,
165 whether before the circuit court or mental hygiene
166 commissioner, and a transcript shall be made available
167 to the individual or his counsel within thirty days, if
168 the same is requested for the purpose of further pro-
169 ceedings. In any case wherein an indigent person intends
170 to pursue further proceedings the circuit court shall, by
171 order entered of record, authorize and direct the court
172 reporter to furnish a transcript of the hearings and
173 the costs of such transcript shall be paid by the county
174 wherein the hearing was held.

175 (d) Upon completion of the hearing, and the evi-
176 dence presented therein, the circuit court or mental
177 hygiene commissioner shall make findings as to whether
178 or not (1) the individual is mentally ill, mentally re-
179 tardated or addicted and because of his illness, retarda-
180 tion or addiction is likely to cause serious harm to
181 himself or to others if allowed to remain at liberty
182 and (2) is a resident of the county in which the hearing
183 is held or currently is a patient at a mental health
184 facility in such county. The circuit court or mental
185 hygiene commissioner shall also make a finding as to

186 whether or not there is a less restrictive alternative
187 than commitment appropriate for the individual. The
188 burden of proof of the lack of a less restrictive alterna-
189 tive than commitment shall be on the person or
190 persons seeking the commitment of the individual.

191 The findings of fact shall be incorporated into the
192 order entered by the circuit court and must be based
193 upon clear, cogent and convincing proof. Upon the
194 requisite findings, the circuit court may order the indi-
195 vidual to a mental health facility for an indeterminate
196 period or for a temporary observatory period not ex-
197 ceeding six months. The individual shall not be de-
198 tained in a mental health facility for a period in excess
199 of five days after a hearing pursuant to this section
200 unless an order has been entered and received by the
201 facility. If the order is for a temporary observation
202 period, the circuit court or mental hygiene commissioner
203 may, at any time prior to the expiration of such period
204 on the basis of a report by the chief medical officer of
205 the mental health facility in which the patient is con-
206 fined, hold another hearing pursuant to the terms of
207 this section and in the same manner as the hearing
208 was held as if it were an original petition for involun-
209 tary hospitalization, to determine whether the original
210 order for a temporary observation period should be
211 modified or changed to an order of indeterminate hos-
212 pitalization of the patient. At the conclusion of the
213 hearing, the circuit court shall order indeterminate hos-
214 pitalization of the patient or dismissal of the proceed-
215 ings. An order for an indeterminate period shall expire
216 of its own terms at the expiration of two years from
217 the date of the last order of commitment.

218 If the circuit court or mental hygiene commissioner
219 finds that the individual is not mentally ill, mentally
220 retarded or addicted, the proceeding shall be dismissed.
221 If the circuit court or mental hygiene commissioner
222 finds that the individual is mentally ill, mentally re-
223 tarded or addicted but is not because of such illness,
224 retardation or addiction likely to cause serious harm to

225 himself or others if allowed to remain at liberty, the
226 proceedings shall be dismissed.

227 (e) The clerk of the circuit court in which an order
228 directing hospitalization is entered, if not in the county
229 of the individual's residence, shall immediately upon
230 entry thereof forward a certified copy of same to the
231 clerk of the circuit court of the county of which
232 the individual is a resident.

233 If the circuit court or mental hygiene commissioner
234 is satisfied that hospitalization should be ordered but
235 finds that the individual is not a resident of the county
236 in which the hearing is held, and the individual is
237 not currently a resident of a mental health facility, a
238 transcript of the evidence adduced at the hearing of
239 such individual, certified by the clerk of the circuit
240 court, shall forthwith be forwarded to the clerk of
241 the circuit court of the county of which such individual
242 is a resident, who shall immediately present such tran-
243 script to the circuit court or mental hygiene commis-
244 sioner of said county. If the circuit court or mental
245 hygiene commissioner of the county of the residence of
246 the individual is satisfied from the evidence contained in
247 such transcript that such individual should be hospitalized
248 as determined by the standard set forth above, the circuit
249 court shall order the appropriate hospitalization as though
250 the individual had been brought before the circuit court or
251 its mental hygiene commissioner in the first instance.
252 This order shall be transmitted forthwith to the clerk of
253 the circuit court of the county in which the hearing was
254 held who shall execute said order promptly.

255 (f) In lieu of ordering the patient to a mental health
256 facility, the circuit court may order the individual deliv-
257 ered to some responsible person who will agree to
258 take care of the individual and the circuit court may
259 take from such responsible person a bond in an amount
260 to be determined by the circuit court with condition
261 to restrain and take proper care of such individual until
262 further order of the court.

263 (g) If the individual found to be mentally ill, men-

264 tally retarded or addicted by the circuit court or mental
265 hygiene commissioner is a resident of another state,
266 this information shall be forthwith given to the director
267 of health, who shall make appropriate arrangements
268 for his transfer to the state of his residence conditioned
269 on the agreement of the individual except as qualified
270 by the interstate compact on mental health.

271 (h) The chief medical officer of a mental health
272 facility admitting a patient pursuant to proceedings
273 under this section shall forthwith make a report of such
274 admission to the director of health.

275 (i) The state shall pay the attorney fees, court re-
276 porter fees and commissioner fees out of a special fund
277 to be established within the office of the state auditor
278 to be known as the "mental hygiene fund." The county
279 commission shall pay out of the county treasury all
280 other expenses incurred in the hearings conducted under
281 the provisions of this article, whether or not hospitaliza-
282 tion is ordered, including any fee allowed by the circuit
283 court by order entered of record for any physician,
284 psychologist and other witnesses.

**§27-5-6. Examination of newly admitted patients; failure to
examine; disposition of patients after examination;
demands for release.**

1 The chief medical officer of the mental health facility
2 shall arrange for psychiatric examinations of every pa-
3 tient hospitalized pursuant to the provisions of section
4 two of this article. If such examination is not completed
5 within three days after the date of admission, or if
6 the physician designated by the chief medical officer
7 cannot certify that in his opinion the patient is mentally
8 ill, mentally retarded or addicted and is likely to injure
9 himself or others if allowed to be at liberty, the patient
10 shall be discharged immediately.

11 If, in the opinion of the designated examining physician,
12 the patient is mentally ill, mentally retarded or addicted
13 and because of such mental illness, mental retardation or
14 addiction he is likely to injure himself or others if allowed
15 to be at liberty, the chief medical officer shall, within five

16 days from the date of admission, institute legal proceed-
17 ings as provided in section four of this article. If such
18 proceedings are not instituted within such five-day period,
19 the patient shall be immediately released. If such pro-
20 ceedings are not completed within twenty days from the
21 date of admittance, the patient shall be immediately
22 released.

23 Notwithstanding any other provisions of this article,
24 when any individual is hospitalized pursuant to the pro-
25 visions of section two of this article, such person or his
26 spouse, relative, guardian or friend may demand in writing
27 that such person be released from the mental health
28 facility. Upon receipt of such demand, the chief medical
29 officer shall either release such person or forthwith
30 institute legal proceedings as specified in section four
31 of this article. The chief medical officer of the facility
32 shall make arrangements for informing each person hos-
33 pitalized therein, under the provisions of section two
34 of this article, of his rights under this section. The chief
35 medical officer shall also assist any such person in making
36 such written demand.

**§27-5-8. Periodic examination and review of patient's hos-
pitalization; appeal procedures for release of pa-
tient from hospitalization.**

1 (a) The chief medical officer of each mental health
2 facility shall cause periodic psychiatric examinations to
3 be made of each individual committed to a facility pur-
4 suant to section four of this article as frequently as the
5 chief medical officer considers desirable, but intervals
6 between examinations shall not exceed three months.
7 A report of the conclusions from each examination shall
8 be given promptly to the chief medical officer. A copy
9 of each report shall be placed in the patient's clinical
10 record and the chief medical officer shall notify the pa-
11 tient as to his continued hospitalization or release based
12 upon the report. If the patient is not released he may
13 appeal and demand his discharge.

14 (b) Appeal shall be made to the chief medical officer
15 of the mental health facility wherein the patient is
16 confined. The chief medical officer shall review the report

17 of the examination and the conclusions resulting there-
18 from and he shall either affirm the patient's continued
19 hospitalization or discharge the patient from confine-
20 ment within three days from the date of his appeal.

21 If, within three days from the date of the patient's
22 appeal, the chief medical officer has not taken action or
23 has taken action unfavorable to the patient, the patient
24 may appeal to a review board of appeal which shall be
25 appointed by the director of health. The review board
26 shall consist of three members, one of whom shall be
27 a psychiatrist. The review board shall consider the
28 patient's clinical record, the report of the examination
29 and conclusions therefrom and any evidence offered by
30 the patient and by the chief medical officer of such
31 facility. The review board shall either order the patient's
32 continued hospitalization or shall order the chief medical
33 officer to discharge the patient within seven days from
34 the date of the patient's appeal to the review board.

35 If, within seven days from the date of the patient's
36 appeal to the review board, the review board has taken
37 no action or has taken action unfavorable to the patient,
38 the patient may appeal to the circuit court of the county
39 of the patient's residence or to the circuit court of the
40 county where the patient is hospitalized. The circuit
41 court or its mental hygiene commissioner shall hold a
42 hearing to review the hospitalization of the patient. If
43 the patient has appealed to the circuit court within one
44 year prior to the present appeal it shall be within the
45 circuit court's discretion to affirm or deny such appeal.
46 A hearing under this section shall be conducted in the
47 manner prescribed in subsections (c) and (d), section
48 four of this article. At such hearing the burden of proof
49 shall be on the person proposing the involuntary hos-
50 pitalization.

51 The administrative and appeal remedies available by
52 virtue of this section shall not be construed to in any
53 way limit or precondition the right to seek release of
54 the patient by habeas corpus. At a habeas corpus hear-
55 ing, the fact that release was obtained on a previous
56 habeas corpus petition shall not bar the consideration of

57 evidence presented at the original commitment pro-
58 ceeding.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

1 (a) The county commission of a person's residence may
2 appoint a committee for a person found to be incompetent.
3 Any finding of incompetency under this article shall be
4 made separately and at a different proceeding from any
5 finding of mental illness, mental retardation or addiction
6 under article four or five of this chapter.

7 (b) Proceedings for the appointment of a committee
8 for an alleged incompetent may be commenced by the
9 filing of a verified petition of a person setting forth the
10 facts showing the incompetency of an individual with
11 the county commission. Upon receipt of a petition, the
12 clerk of the county commission shall give notice of the
13 hearing thereon to the individual and to the individual's
14 spouse, or if the individual does not have a spouse, to
15 the individual's adult next of kin: *Provided, That such*
16 *person shall not be the petitioner: Provided further,*
17 *That such individual shall be served with notice of such*
18 *hearing by delivering unto such individual in person*
19 *written notice thereof together with a true copy of such*
20 *verified petition, which notice shall be served upon the*
21 *individual alleged to be incompetent at least ten days*
22 *before the time of such hearing within the county in*
23 *which such hearing is to be held.*

24 Such individual alleged to be incompetent shall be
25 accorded the right to subpoena witnesses, to be confronted
26 with witnesses and the right to cross-examine witnesses
27 which may be offered against him, and the county
28 commission on or before the commencement of such
29 hearing shall appoint a competent attorney practicing
30 before the bar of the circuit court of the county wherein
31 such hearing is to be held as guardian ad litem for the
32 purpose of representing the interest of such individual
33 throughout such proceedings under this section. Not-
34 withstanding any requirement hereof to the contrary
35 such hearing may proceed without the presence of the

36 individual alleged to be incompetent if (1) proper notice
37 has been served upon the party alleged to be incompetent
38 as required herein, and (2) a duly licensed physician
39 shall have certified in writing and upon affidavit that
40 he or she has examined such individual and that such
41 individual is physically unable to appear at such hearing
42 or that such an appearance would likely impair or
43 endanger the health of such individual, or (3) such indi-
44 vidual refuses to appear, and (4) upon the specific written
45 findings by such commission of facts as will justify a
46 hearing without the presence of such individual as pro-
47 vided in this subsection.

48 (c) A record shall be made of all proceedings. A
49 transcript shall be made available to the individual or
50 his counsel within thirty days, if the same is requested
51 For purposes of appeal. In any case wherein an indigent
52 person seeks an appeal, the circuit court shall, by order
53 entered of record, authorize and direct the court reporter
54 to furnish a transcript of the hearing and the cost of
55 such transcript shall be paid by the county wherein the
56 hearing was held.

57 (d) Upon completion of the hearing and upon the
58 evidence presented therein the county commission may
59 find that (i) the individual is unable to manage his busi-
60 ness affairs, or (ii) the individual is unable to care for
61 his physical well-being, or (iii) both, and is therefore
62 incompetent, or (iv) that the person is competent. Evi-
63 dence of mere poor judgment or of different life style
64 shall not be competent evidence upon which to base a
65 finding of incompetency.

66 (1) "Unable to manage one's business affairs" means
67 the inability to know and appreciate the nature and effect
68 of his business transactions, notwithstanding the fact
69 that he may display poor judgment.

70 (2) "Unable to care for one's physical well-being"
71 means the substantial risk of physical harm to himself as
72 evidenced by conduct demonstrating that he is dangerous
73 to himself, notwithstanding the fact that he may display
74 poor judgment.

75 If the county commission finds the person to be com-
76 petent, the proceedings shall be dismissed. No appoint-
77 ment of a committee shall be made on evidence which is
78 uncorroborated by the testimony of a medical expert.
79 If the individual refuses to submit to an examination by
80 a physician, the circuit court may upon petition, issue
81 a rule against the individual to show cause why the
82 individual should not submit to an examination. A copy
83 of the petition shall accompany service of the rule and
84 such rule shall be returnable at a time to be fixed by
85 the court.

86 (e) The extent of the committee's authority shall be
87 specified in the order of the county commission. No
88 authority of a committee shall extend beyond what is
89 necessary for the protection of the individual. A finding
90 of inability to care for one's physical well-being shall
91 entitle the committee to custody of the individual, except
92 when the individual is under a commitment order to a
93 mental health facility, but only to the extent as is neces-
94 sary for the protection of the individual.

95 (f) An individual found incompetent pursuant to sub-
96 section (d) of this section shall have the right to an
97 appeal and hearing thereon in the circuit court of the
98 county. The judge shall hear the matter on appeal as
99 provided in article three, chapter fifty-eight of this code
100 or order a hearing de novo on the matter.

101 (g) The individual or any person may apply to the
102 county commission in the manner provided by subsection
103 (b) of this section for termination of his committee at
104 any time and appeal from a determination thereon in
105 the manner provided by this section or in the alternative,
106 the individual may seek such termination by habeas
107 corpus.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

**§28-5-31. Mentally diseased convicts; treatment; transfer be-
tween penal and mental health facilities; penal
facility procedures.**

1 (a) No person who is, or was considered to be, men-

2 tally ill, mentally retarded or addicted shall be denied
3 parole or a parole hearing based upon such past or
4 present condition. In the event a convicted person
5 is deemed to be an appropriate candidate for parole,
6 but for a condition warranting involuntary hospitaliza-
7 tion such person shall be paroled and proceedings insti-
8 tuted pursuant to section four, article five, chapter
9 twenty-seven of this code. Any time spent in such fa-
10 cility shall be considered part of the term, and any
11 person whose sentence expires while receiving treat-
12 ment for a mental condition shall be discharged unless
13 proceedings have been instituted and a determination
14 made pursuant to section four, article five, chapter
15 twenty-seven of this code.

16 (b) When a convicted person in a jail, prison or
17 other facility is believed to be mentally ill, mentally
18 retarded or addicted and in need of treatment, training
19 or other services therefor, which cannot be most effec-
20 tively provided at such penal facility, proceedings for
21 the transfer of such individual may be initiated by
22 the filing of an application by a correctional officer,
23 warden, member of a penal institution medical staff,
24 relative, friend or the convicted person stating that the
25 individual is mentally ill, mentally retarded or addicted
26 and is in need of treatment, training or other services
27 therefor; and further, if the application is made by a
28 member of the staff of a penal facility it shall state
29 the nature of the treatment, training or services which
30 the person's condition warrants and the facility to which
31 transfer is sought. The application shall be filed with
32 the clerk of the circuit court of the county of location
33 of the facility to which transfer is sought or the county
34 wherein the individual was convicted. The mental hy-
35 giene commissioner or circuit judge shall forthwith
36 appoint counsel for the convicted person in no event
37 later than ten days following the receipt of the applica-
38 tion by the clerk unless the person has retained
39 counsel.

40 If the application was filed by the warden or other
41 staff member of a penal facility, the clerk of the circuit

42 court shall forthwith notify the respondent convicted
43 person by certified mail, return receipt requested, de-
44 livered only to the addressee, that such application has
45 been filed, enclosing therewith a copy of the application
46 with an explanation of the place and purpose of the
47 transfer and the type of treatment to be afforded, to-
48 gether with the name, address and telephone number
49 of the appointed counsel. The person shall be afforded
50 unrestricted telephone access to his counsel. If the
51 application was filed by the convicted person or a rela-
52 tive or friend on such person's behalf, the clerk shall
53 by adequate means notify the respondent or the officer
54 of the penal facility where the individual is incarcerated.
55 Within fifteen days after the receipt of the application,
56 the respondent shall file a verified return admitting or
57 denying the allegations in the application and informing
58 the mental hygiene commissioner as to whether the
59 respondent wishes to oppose the transfer. If the con-
60 victed person is the respondent, counsel shall file the
61 return after personal consultation with such person.
62 If the respondent in such verified return does not oppose
63 the transfer, the mental hygiene commissioner shall
64 order the transfer of the convicted person to the facility
65 designated in the petition.

66 If the transfer is opposed, the matter shall forthwith
67 be set for hearing, in no event to exceed twenty days,
68 and the clerk shall provide to the convicted person at
69 least ten days' written notice by certified mail, return
70 receipt requested, of the purpose and place of the
71 hearing.

72 The convicted person shall be present at the hearing
73 and be afforded an opportunity to testify and to present
74 and cross-examine witnesses. Counsel for the convicted
75 person shall be entitled to copies of all medical reports
76 upon request. The person shall have the right to an
77 examination by an independent expert of the person's
78 choice and testimony from such expert as a medical
79 witness on the person's behalf. The cost of such medical
80 expert shall be borne by the state if the person is in-
81 digent. The person shall not be required to give testi-

82 mony which is self-incriminating. The circuit court
83 or mental hygiene commissioner shall hear evidence
84 from all parties in accord with the rules of evidence.
85 A transcript or recording shall be made of all proceed-
86 ings, and transcript made available to the person within
87 thirty days, if the same is requested for the purpose
88 of further proceedings, and without cost if the person
89 is indigent.

90 Upon completion of the hearing, and the evidence
91 presented therein, the circuit court or mental hygiene
92 commissioner shall make findings of fact. If the peti-
93 tioner is the convicted person, findings shall be made
94 as to whether the person is mentally ill, mentally re-
95 tardated or addicted, and with a positive finding the cir-
96 cuit court shall order transfer to the appropriate facility
97 for treatment or training. If the petitioner is other than
98 the convicted person and the convicted person opposes
99 the transfer, the findings shall be made as to whether
100 or not (1) the individual is mentally ill, or mentally
101 retarded or addicted; (2) the individual because of men-
102 tal illness, mental retardation or addiction is likely to
103 cause serious harm to self or others; and (3) the indi-
104 vidual would not obtain the requisite treatment or train-
105 ing at the penal facility or another appropriate facility;
106 and if all of such findings are in the affirmative, the
107 circuit court may order the transfer of such person
108 to the designated facility. The findings of fact shall be
109 incorporated into the order entered by the circuit court.
110 In all proceedings hereunder proof of mental condition
111 and of likelihood of serious harm must be established
112 by clear, cogent and convincing evidence, and the likeli-
113 hood of serious harm must be based upon evidence of
114 recent overt acts: *Provided*, That no such evidence of
115 recent overt acts need be introduced when the applicant
116 alleges the individual is likely to cause serious harm
117 as a result of having a complete inability to care for
118 himself by reason of mental retardation.

CHAPTER 63

(Com. Sub. for S. B. 448—By Mr. Brotherton, Mr. President, and Mr. Gaier.)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-a, relating to authorizing the reclamation commission and the director of the department of natural resources to implement the provisions of section 515 of the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87); expanding the rule-making authority of the director and reclamation commission of the department of natural resources with regard thereto; and providing for expiration of authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-23a. Implementing federal surface mining and control standards under Public Law 95-87 and expanding rule-making authority of the director and reclamation commission; expiration of authority.

1 The Legislature finds that the Surface Mining Control
2 and Reclamation Act of 1977 (Public Law 95-87), here-
3 inafter cited as P. L. 95-87, and specifically subsection
4 502 (c) therein may prohibit the state from issuing
5 surface-mining permits for coal after the third day of
6 February, one thousand nine hundred seventy-eight,
7 unless such permits contain conditions requiring com-
8 pliance with the provisions of said federal law. Be-
9 cause the inability of the state to issue permits after
10 that date would prevent the operation of surface mines
11 which are needed to supply coal to meet energy needs

12 for the preservation of the public health, safety and
13 welfare and, since authority to regulate the surface
14 mining of coal in the state has already been vested in
15 the department of natural resources and the reclama-
16 tion commission, the Legislature does hereby intend to
17 expand the authority of the department and the com-
18 mission to issue permits in compliance with the federal
19 law.

20 In addition to the other powers, duties and authority
21 of the reclamation commission provided elsewhere in this
22 chapter and article two, chapter twenty-two of this code,
23 the commission may promulgate rules and regulations
24 necessary to require the surface mining of coal in this
25 state to be in compliance and conformity with section
26 515, Title V of P. L. 95-87.

27 In addition to the other powers, duties, and authority
28 of the director of the department of natural resources
29 provided elsewhere in this chapter, the director may
30 promulgate rules and regulations adequate to enforce
31 the rules and regulations promulgated by the reclama-
32 tion commission in accordance with the preceding para-
33 graph.

34 The expanded rule-making authority above mentioned
35 may include the promulgation and enforcement of rules
36 and regulations as prescribed by section 515, Title V of
37 P. L. 95-87 and such authority shall specifically include
38 the authority to regulate and enforce rules and regula-
39 tions regulating the surface effect of deep mining in this
40 state in conformity with section 515, Title V of P. L.
41 95-87 and article two, chapter twenty-two of this code.

42 The director shall cause a copy of P. L. 95-87 to be
43 filed in the office of the secretary of state for public in-
44 spection.

45 The expanded rule-making authority as expressed here-
46 in shall be of an interim and temporary effect in that such
47 expanded authority for both the director of natural
48 resources and the reclamation commission and all such
49 rules and regulations promulgated pursuant to the author-
50 ity granted by this section shall expire and have no force

51 and effect after the thirtieth day of August, one thousand
52 nine hundred seventy-nine.

53 All rules and regulations promulgated pursuant to the
54 authority granted under this section shall be subject to the
55 the provisions of chapter twenty-nine-a of the code:
56 *Provided*, That this requirement shall in no way limit the
57 application of said chapter twenty-nine-a to any other
58 rules and regulations promulgated by the reclamation
59 commission or the director of the department of natural
60 resources.

CHAPTER 64

(Com. Sub. for H. B. 909—By Mr. Blevins)

[Passed March 8, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to the maximum permissible interest rate for nonpre-computed loans of money made pursuant to this section secured by mortgages or deeds of trust on real property located in this state; setting forth certain legislative findings and a legislative purpose; authorizing and directing the West Virginia commissioner of banking to prescribe each month a maximum rate of interest for such loans which shall not exceed one and one-half percent above the average of yields on certain long-term United States government bonds; specifying criteria to be considered by the commissioner of banking fixing such maximum rate of interest; authorizing parties to contract in writing for the payment of interest not to exceed such maximum rate; prohibiting penalty upon prepayment and escalation of interest clause; fixing at time of commitment and interest rate on certain loans to be consummated in the future; and directing the commissioner of banking to require banking institutions, savings and

loan associations and certain other financial institutions to file quarterly reports with respect to certain loans of money secured by mortgages or deeds of trust on real property.

Be it enacted by the Legislature of West Virginia:

That article six, chapter forty-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 five-b, to read as follows:

ARTICLE 6. MONEY AND INTEREST.

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in permissible interest rates on nonprecomput-
3 ed loans require specialized knowledge of the needs of citizens
4 of West Virginia for credit for the construction and purchase
5 of adequate housing and of buildings and improvements for
6 the establishment and expansion of businesses and agricultural
7 enterprises situate in the state and of the availability of such
8 credit at reasonable rates to the citizens of the state of West
9 Virginia while affording a competitive return to persons ex-
10 tending such credit;

11 (2) Maximum interest rates on nonprecomputed loans to be
12 secured by mortgages or deeds of trust on real property located
13 in this state should be prescribed from time to time to reflect
14 changed economic conditions, current interest rates throughout
15 the United States and the availability of credit within the state
16 in order to promote the making of such loans in this state; and

17 (3) The prescribing of such maximum interest rates can be
18 accomplished effectively and flexibly by the West Virginia
19 commissioner of banking.

20 (b) In view of the foregoing findings, it is the purpose of
21 this section to authorize the West Virginia commissioner of
22 banking to prescribe from time to time the maximum interest
23 rates on nonprecomputed loans of money made pursuant to
24 this section to be secured by mortgages or deeds of trust on
25 real property located in this state, subject to the provisions,
26 conditions and limitations hereinafter set forth and to autho-
27 rize lenders to charge up to the maximum interest rates so
28 fixed.

29 (c) The West Virginia commissioner of banking is hereby
30 authorized and directed to prescribe each month by order a
31 maximum rate of interest for the next succeeding month for
32 any nonprecomputed loan of money made pursuant to this
33 section to be secured by a mortgage or deed of trust upon real
34 property located in this state, which maximum rate of interest
35 shall not exceed the monthly index of long-term United States
36 government bond yields for the preceding calendar month,
37 plus an additional one and one-half percent per year
38 rounded off to the nearest quarter of one percent per year
39 and such maximum rate shall be valid for the term of the
40 loan contract. For the purpose of this section, the monthly
41 index of long-term United States government bond yields
42 means the monthly unweighted average of the daily unweighted
43 average of the closing bid yield quotations in the over-the-
44 counter market for all outstanding United States treasury bond
45 issues, based on available statistics, which mature in twenty
46 years or more from the date the index is calculated, but shall
47 not include such bonds as are redeemable at par for payment
48 of federal estate taxes. In fixing said maximum rates of inter-
49 est, the commissioner of banking shall take into consideration
50 prevailing economic conditions including said monthly index
51 of long-term United States government bond yields for the
52 preceding calendar month, yields on conventional home and
53 multifamily housing mortgage and deed of trust loans through-
54 out the United States and on corporate interest-bearing securi-
55 ties of high quality, and the availability of credit at reasonable
56 rates to the citizens of this state which will afford a competi-
57 tive return to persons extending such credit.

58 (d) On or before the twentieth day of each month the West

59 Virginia banking commissioner shall ascertain the monthly
60 index of long-term United States government bond yields for
61 the preceding calendar month and shall then prescribe by order
62 in accordance with subsection (c) of this section the maximum
63 rate of interest for the next succeeding month for any non-
64 precomputed loan of money made pursuant to this section to
65 be secured by a mortgage or deed of trust upon real property
66 located in this state, and shall cause such maximum rate of
67 interest to be issued to the public, such maximum rate of
68 interest to be effective on the first day of the next succeeding
69 month.

70 (e) Notwithstanding any other provisions of this section, the
71 commissioner of banking shall on or before the effective date
72 of this section prescribe by order the maximum rate of
73 interest for any nonprecomputed loan of money pursuant
74 to this section to be secured by a mortgage or deed of
75 trust upon real property located in this state for the month
76 in which this section becomes effective and shall at the
77 earliest possible date prescribe the maximum rate of in-
78 terest for any such loan for the next succeeding month, and
79 shall issue such maximum rates of interest to the public;
80 and the state commissioner of banking shall thereafter deter-
81 mine and issue the maximum rate of interest for any such loan
82 in conformity with the other provisions of this section.

83 (f) As an alternative to the interest rate authorized by any
84 other provision of this code, where a nonprecomputed loan of
85 money is secured by a mortgage or deed of trust upon real
86 property located in this state, the parties may, after the effec-
87 tive date of this section, contract in writing for the payment of
88 interest for such loan of money at a rate, including points
89 expressed as a percentage of the loan divided by the number
90 of years of the loan contract, not to exceed the then effective
91 maximum rate prescribed by the state banking commissioner
92 pursuant to the provisions of this section and such rate shall
93 be valid for the term of such contract: *Provided*, That the
94 points charged shall not exceed one percent of the original
95 bona fide principal amount of the loan, except that in the
96 case of a construction loan, the points charged shall not
97 exceed two percent of the original bona fide principal amount

98 of the loan: *Provided, however,* That the parties may contract
99 in writing for the payment of interest for such loan of money
100 at the rate specified in this subsection (f) only if such contract
101 in writing also specifies that there shall be no penalty whatever
102 for prepayment of the loan in whole or in part by cash, a new
103 loan or otherwise, and such contract provision prohibiting
104 any such penalty shall govern and control notwithstanding any
105 other provision of this code to the contrary, whether such
106 other provision was enacted before or after the enactment of
107 this section: *Provided further,* That no such contract shall
108 contain an escalation of interest clause which would allow an
109 increase in the rate of interest being charged.

110 (g) For the purpose of subsection (f) of this section, the
111 term "points" is defined as the amount of money, or other
112 consideration, received by the lender, from whatever source,
113 as a consideration for making the loan and not otherwise ex-
114 pressly permitted by statute.

115 (h) A commitment to make a nonprecomputed loan of
116 money pursuant to this section to be secured by a mortgage or
117 deed of trust upon real property located in this state which
118 provides for consummation within some future time may be
119 consummated pursuant to the provisions, including interest
120 rate, of such commitment notwithstanding the fact that the
121 maximum rate of interest at the time the mortgage or deed of
122 trust is entered into is less than the commitment rate of inter-
123 est: *Provided,* That the commitment rate of interest does not
124 exceed the maximum interest rate in effect on the date the
125 commitment was issued: *Provided, however,* That the com-
126 mitment when agreed to by the borrower constitutes a legally
127 binding obligation on the part of the lender to make such a
128 loan within a specified time period in the future at a rate of
129 interest not exceeding the maximum rate of interest effective
130 as of the date of commitment, and the commitment does not
131 include any condition for increase of the interest rate at the
132 time of loan consummation even though the maximum rate of
133 interest is then higher.

134 (i) Nothing contained in this section shall prohibit the
135 parties to any loan transaction from contracting for a rate of
136 interest authorized by any other provision of this code.

137 (j) The commissioner of banking shall promulgate rules
138 and regulations requiring all banking institutions, savings and
139 loan associations and other financial institutions making loans
140 in this state of the type specified in this section to file with
141 him quarterly reports as to the number and amount of such
142 loans made during the preceding quarter, and such quarterly
143 reports shall contain sufficient detail to ascertain whether the
144 provisions of this section have promoted the making of such
145 loans.

CHAPTER 65

(Com. Sub. for S. B. 88—By Mr. Rollins)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and eight, article one, chapter seventeen-c of said code; to further amend said article by adding thereto a new section, designated section five-a; to amend and reenact sections two, four, six, seven, fifteen, twenty, twenty-three, twenty-five, thirty-one, thirty-two and forty-four, article fifteen of said chapter; and to further amend said article by adding thereto a new section, designated section forty-five, all relating to motor vehicles; providing for the licensing, registration and regulation of mopeds by the department of motor vehicles; defining the term "moped"; redefining "motorcycle," "motor-driven cycle" and "bicycle"; operating equipment requirements for mopeds; safety equipment requirements for operators and passengers on motorcycles, motor-driven cycles and mopeds; and authority of the motorcycle safety standards and specifications board.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, be amended and reenacted; that sections five and eight, article one, chapter seventeen-c of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section five-a; that sections two, four, six, seven, fifteen, twenty, twenty-three, twenty-five, thirty-one, thirty-two and forty-four, article fifteen of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section forty-five, all to read as follows:

Chapter

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.

17C. Traffic Regulations and Laws of the Road.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter the fol-
2 lowing words and phrases when used in this chapter
3 shall have the meanings respectively ascribed to them in
4 this article:

5 (a) "Vehicle" means every device in, upon or by
6 which any person or property is or may be transported
7 or drawn upon a highway, excepting devices moved by
8 human power or used exclusively upon stationary rails
9 or tracks.

10 (b) "Motor vehicle" means every vehicle which is
11 self-propelled and every vehicle which is propelled by
12 electric power obtained from overhead trolley wires, but
13 not operated upon rails.

14 (c) "Motorcycle" means every motor vehicle, includ-
15 ing motor-driven cycles and mopeds as defined in sections
16 five and five-a, article one, chapter seventeen-c of this
17 code, having a saddle for the use of the rider and designed
18 to travel on not more than three wheels in contact with
19 the ground but excluding a tractor.

20 (d) "School bus" means every motor vehicle owned
21 by a public governmental agency and operated for the
22 transportation of children to or from school or privately
23 owned and operated for compensation for the transpor-
24 tation of children to or from school.

25 (e) "Bus" means every motor vehicle designed for
26 carrying more than seven passengers and used for the
27 transportation of persons; and every motor vehicle, other
28 than a taxicab, designed and used for the transportation
29 of persons for compensation.

30 (f) "Truck tractor" means every motor vehicle de-
31 signed and used primarily for drawing other vehicles
32 and not so constructed as to carry a load other than a
33 part of the weight of the vehicle and load so drawn.

34 (g) "Farm tractor" means every motor vehicle de-
35 signed and used primarily as a farm implement for draw-
36 ing plows, mowing machines, and other implements of
37 husbandry.

38 (h) "Road tractor" means every motor vehicle de-
39 signed, used or maintained drawing other vehicles and
40 not so constructed as to carry any load thereon either
41 independently or any part of the weight of a vehicle or
42 load so drawn.

43 (i) "Truck" means every motor vehicle designed, used
44 or maintained primarily for the transportation of
45 property.

46 (j) "Trailer" means every vehicle with or without
47 motive power designed for carrying persons or property
48 and for being drawn by a motor vehicle and so con-
49 structed that no part of its weight rests upon the towing
50 vehicle.

51 (k) "Semitrailer" means every vehicle with or with-
52 out motive power designed for carrying persons or prop-
53 erty and for being drawn by a motor vehicle and so
54 constructed that some part of its weight and that of its
55 load rests upon or is carried by another vehicle.

56 (l) "Pole trailer" means every vehicle without motive
57 power designed to be drawn by another vehicle and
58 attached to the towing vehicle by means of a reach, or
59 pole, or by being boomed or otherwise secured to the
60 towing vehicle, and ordinarily used for transporting long
61 or irregularly shaped loads such as poles, pipes, or struc-
62 tural members capable, generally, of sustaining them-
63 selves as beams between the supporting connections.

64 (m) "Specially constructed vehicles" means every
65 vehicle of a type required to be registered hereunder not
66 originally constructed under a distinctive name, make,
67 model or type by a generally recognized manufacturer
68 of vehicles and not materially altered from its original
69 construction.

70 (n) "Reconstructed vehicle" means every vehicle of a
71 type required to be registered hereunder materially
72 altered from its original construction by the removal,
73 addition or substitution of essential parts, new or used.

74 (o) "Essential parts" means all integral and body
75 parts of a vehicle of a type required to be registered
76 hereunder, the removal, alteration or substitution of
77 which would tend to conceal the identity of the vehicle
78 or substantially alter its appearance, model, type or mode
79 of operation.

80 (p) "Foreign vehicle" means every vehicle of a type
81 required to be registered hereunder brought into this
82 state from another state, territory or country other than
83 in the ordinary course of business by or through a manu-
84 facturer or dealer and not registered in this state.

85 (q) "Implement of husbandry" means every vehicle
86 which is designed for or adapted to agricultural purposes
87 and used by the owner thereof primarily in the conduct
88 of his agricultural operations, including, but not limited
89 to, trucks used for spraying trees and plants: *Provided*,
90 That said vehicle shall not be let for hire at any time.

91 (r) "Special mobile equipment" means every vehicle
92 not designed or used for the transportation of persons

93 or property and incidentally operated or moved over
94 the highways, including road construction or maintenance
95 machinery, ditch digging apparatus, well-boring appa-
96 ratus, concrete mixers and farm tractors, when farm
97 tractors cannot be classified as an implement of hus-
98 bandry as defined in subdivision (q) of this section. The
99 foregoing enumeration shall be deemed partial and shall
100 not operate to exclude other such vehicles which are
101 within the general terms of this subdivision.

102 (s) "Pneumatic tire" means every tire in which com-
103 pressed air is designed to support the load.

104 (t) "Solid tire" means every tire of rubber or other
105 resilient material which does not depend upon com-
106 pressed air for the support of the load.

107 (u) "Metal tire" means every tire the surface of which
108 in contact with the highway is wholly or partly of metal
109 or other hard, nonresilient material.

110 (v) "Commissioner" means the commissioner of motor
111 vehicles of this state.

112 (w) "Department" means the department of motor
113 vehicles of this state acting directly or through its duly
114 authorized officers and agents.

115 (x) "Person" means every natural person, firm, co-
116 partnership, association or corporation.

117 (y) "Owner" means a person who holds the legal
118 title to a vehicle, or in the event a vehicle is the subject
119 of an agreement for the conditional sale or lease thereof
120 with the right of purchase upon performance of the con-
121 ditions stated in the agreement and with an immediate
122 right of possession vested in the conditional vendee or
123 lessee, or in the event a mortgagor of a vehicle is entitled
124 to possession, then such conditional vendee or lessee
125 or mortgagor shall be deemed the owner for the purpose
126 of this chapter.

127 (z) "Nonresident" means every person who is not a
128 resident of this state.

129 (aa) "Dealer" or "dealers" is a general term meaning,
130 depending upon the context in which used, either a new
131 motor vehicle dealer, used motor vehicle dealer, house
132 trailer dealer, trailer dealer or motorcycle dealer, as
133 defined in section one, article six of this chapter, or all
134 of such dealers or a combination thereof, and in some
135 instances a new motor vehicle dealer or dealers in an-
136 other state.

137 (bb) "Registered dealer" or "registered dealers" is a
138 general term meaning, depending upon the context in
139 which used, either a new motor vehicle dealer, used
140 motor vehicle dealer, house trailer dealer, trailer dealer,
141 or motorcycle dealer, or all of such dealers or a combina-
142 tion thereof, licensed under the provisions of article six
143 of this chapter.

144 (cc) "Licensed dealer" or "licensed dealers" is a gen-
145 eral term meaning, depending upon the context in which
146 used, either a new motor vehicle dealer, used motor
147 vehicle dealer, house trailer dealer, trailer dealer, or
148 motorcycle dealer, or all of such dealers or a combination
149 thereof, licensed under the provisions of article six of
150 this chapter.

151 (dd) "Transporter" means every person engaged in
152 the business of delivering vehicles of a type required
153 to be registered hereunder from a manufacturing, assem-
154 bling or distributing plant to dealers or sales agents of a
155 manufacturer.

156 (ee) "Manufacturer" means every person engaged in
157 the business of constructing or assembling vehicles of
158 a type required to be registered hereunder at a place of
159 business in this state which is actually occupied either
160 continuously or at regular periods by such manufacturer
161 where his books and records are kept and a large share
162 of his business is transacted.

163 (ff) "Street" or "highway" means the entire width
164 between boundary lines of every way publicly main-
165 tained when any part thereof is open to the use of the
166 public for purposes of vehicular travel.

**CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF
THE ROAD.****Article****1. Words and Phrases Defined.****15. Equipment.****ARTICLE 1. WORDS AND PHRASES DEFINED.**

§17C-1-5. Motor-driven cycle.

§17C-1-5a. Moped.

§17C-1-8. Bicycle.

§17C-1-5. Motor-driven cycle.

- 1 "Motor-driven cycle" means every motorcycle having a
- 2 piston displacement of more than fifty cubic centimeters
- 3 but not more than one hundred fifty cubic centimeters,
- 4 or with not more than five brake horsepower.

§17C-1-5a. Moped.

- 1 "Moped" means every motorcycle or motor-driven cycle
- 2 unless otherwise specified in this chapter, which is
- 3 equipped with two or three wheels, foot pedals to permit
- 4 muscular propulsion and an independent power source
- 5 providing a maximum of two brake horsepower. If a
- 6 combustion engine is used, the maximum piston or rotor
- 7 displacement shall be fifty cubic centimeters regardless
- 8 of the number of chambers in such power source. The
- 9 power source shall be capable of propelling the vehicle,
- 10 unassisted, at a speed not to exceed thirty miles per hour
- 11 on a level road surface and shall be equipped with a power
- 12 drive system that functions directly or automatically only,
- 13 not requiring clutching or shifting by the operator after
- 14 the drive system is engaged.

§17C-1-8. Bicycle.

- 1 "Bicycle" means every device which does not have a
- 2 motor attached and which is propelled by human power
- 3 upon which any person may ride, having two tandem
- 4 wheels either of which is more than twenty inches in
- 5 diameter.

ARTICLE 15. EQUIPMENT.

§17C-15-2. When lighted lamps are required.

§17C-15-4. Head lamps on motor vehicles.

- §17C-15-6. New motor vehicles to be equipped with reflectors.
- §17C-15-7. Stop lamps required on new motor vehicles.
- §17C-15-15. Lamps on parked vehicles.
- §17C-15-20. Multiple-beam road-lighting equipment—Requirements generally.
- §17C-15-23. Lighting equipment on motorcycles, motordriven cycles and mopeds.
- §17C-15-25. Number of driving lamps required or permitted.
- §17C-15-31. Brakes—Generally.
- §17C-15-32. Brakes on motorcycles, motor-driven cycles and mopeds.
- §17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and specifications board.
- §17C-15-45. Certification labels on mopeds.

§17C-15-2. When lighted lamps are required.

1 Every vehicle other than a motorcycle, motor-driven
2 cycle or moped operated upon a highway within this state
3 at any time from sunset to sunrise and at any other time
4 when there is not sufficient light to render clearly dis-
5 cernible persons and vehicles on the highway at a distance
6 of five hundred feet ahead shall display lighted lamps
7 and illuminating devices as hereinafter respectively re-
8 quired for different classes of vehicles, subject to excep-
9 tions with respect to parked vehicles as hereinafter stated.
10 Every motorcycle, motor-driven cycle, and moped shall
11 display lighted head lamps at all times when upon the
12 highway.

§17C-15-4. Head lamps on motor vehicles.

1 (a) Every motor vehicle other than a motorcycle, motor-
2 driven cycle or moped shall be equipped with at least
3 two head lamps with at least one on each side of the
4 front of the motor vehicle, which head lamps shall
5 comply with the requirements and limitations set forth
6 in this article.

7 (b) Every motorcycle, motor-driven cycle and moped
8 shall be equipped with at least one and not more than
9 two head lamps which shall comply with the require-
10 ments and limitations of this article.

11 (c) Every head lamp upon every motor vehicle, in-
12 cluding every motorcycle, motor-driven cycle and

13 moped, shall be located at a height measured from the
14 center of the head lamp of not more than fifty-four
15 inches nor less than twenty-four inches to be measured
16 as set forth in section three of this article.

§17C-15-6. New motor vehicles to be equipped with reflectors.

1 (a) Every new motor vehicle hereafter sold and
2 operated upon a highway, other than a truck tractor,
3 shall carry on the rear, either as a part of the tail lamps
4 or separately, two red reflectors, except that every
5 motorcycle, motor-driven cycle and moped shall carry
6 at least one reflector, meeting the requirements of this
7 section, and except that vehicles of the type mentioned
8 in section nine of this article shall be equipped with
9 reflectors as required in those sections applicable there-
10 to.

11 (b) Every such reflector shall be mounted on the
12 vehicle at a height not less than fifteen inches nor more
13 than sixty inches measured as set forth in section three
14 (b), and shall be of such size and characteristics and
15 so mounted as to be visible at night from all distances
16 within three hundred feet to fifty feet from such vehicle
17 when directly in front of lawful upper beams of head
18 lamps, except that visibility from a greater distance is
19 hereinafter required of reflectors on certain types of
20 vehicles.

§17C-15-7. Stop lamps required on new motor vehicles.

1 No person may sell any new motor vehicle, including
2 any motorcycle, motor-driven cycle or moped, in this
3 state and no person may drive such vehicle on the high-
4 way unless it is equipped with a stop lamp meeting the
5 requirements of section eighteen of this article.

§17C-15-15. Lamps on parked vehicles.

1 (a) Whenever a vehicle is lawfully parked upon a
2 street or highway during the hours between sunset and
3 sunrise and in the event there is sufficient light to reveal
4 any person or object within a distance of five hundred
5 feet upon such street or highway no lights need be dis-
6 played upon such parked vehicle.

7 (b) Whenever a vehicle is parked or stopped upon a
8 roadway or shoulder adjacent thereto, whether attended
9 or unattended, during the hours between sunset and
10 sunrise and there is not sufficient light to reveal any
11 person or object within a distance of five hundred feet
12 upon such highway, such vehicle so parked or stopped
13 shall be equipped with one or more lamps meeting the
14 following requirements: At least one lamp shall dis-
15 play a white or amber light visible from a distance of
16 five hundred feet to the front of the vehicle, and the
17 same lamp or at least one other lamp shall display a
18 red light visible from a distance of five hundred feet
19 to the rear of the vehicle, and the location of said lamp
20 or lamps shall always be such that at least one lamp or
21 combination of lamps meeting the requirements of this
22 section is installed as near as practicable to the side of
23 the vehicle which is closest to passing traffic. The fore-
24 going provisions shall not apply to a motorcycle, motor-
25 driven cycle or moped.

26 (c) Any lighted head lamps upon a parked vehicle
27 shall be depressed or dimmed.

**§17C-15-20. Multiple-beam road-lighting equipment—Require-
ments generally.**

1 Except as hereinafter provided, the head lamps or the
2 auxiliary driving lamp or the auxiliary passing lamp or
3 combinations thereof on motor vehicles other than a
4 motorcycle, motor-driven cycle or moped shall be so
5 arranged that the driver may select at will between dis-
6 tributions of light projected to different elevations and
7 such lamps may, in addition, be so arranged that such
8 selection can be made automatically, subject to the follow-
9 ing limitations:

10 (a) There shall be an uppermost distribution of light,
11 or composite beam, so aimed and of such intensity as to
12 reveal persons and vehicles at a distance of at least three
13 hundred and fifty feet ahead for all conditions of loading.

14 (b) There shall be a lowermost distribution of light,
15 or composite beam, so aimed and of sufficient intensity to

16 reveal persons and vehicles at a distance of at least one
17 hundred feet ahead; and on a straight level road under
18 any condition of loading none of the high-intensity portion
19 of the beam shall be directed to strike the eyes of an
20 approaching driver.

21 (c) Every new motor vehicle, other than a motorcycle,
22 motor-driven cycle or moped, registered in the state after
23 January first, one thousand nine hundred fifty-two, which
24 has multiple-beam road-lighting equipment shall be
25 equipped with a beam indicator, which shall be lighted
26 whenever the uppermost distribution of light from the
27 head lamps is in use, and shall not otherwise be lighted.
28 Said indicator shall be so designed and located that when
29 lighted it will be readily visible without glare to the
30 driver of the vehicle so equipped.

**§17C-15-23. Lighting equipment on motorcycles, motor-driven
cycles and mopeds.**

1 The head lamp or head lamps upon every motorcycle,
2 motor-driven cycle and moped may be of the single-beam
3 or multiple-beam type but in either event shall comply
4 with the requirements and limitations as follows:

5 (1) Every said head lamp or head lamps shall be of
6 sufficient intensity to reveal a person or a vehicle at a
7 distance of not less than one hundred feet when the
8 motorcycle, motor-driven cycle or moped is operated at
9 any speed less than twenty-five miles per hour and at a
10 distance of not less than two hundred feet when it is
11 operated at a speed of twenty-five or more miles per hour.

12 (2) In the event the motorcycle, motor-driven cycle or
13 moped is equipped with a multiple-beam type head lamp
14 or head lamps the upper beam shall meet the minimum
15 requirements set forth above and shall not exceed the
16 limitations set forth in section twenty (a) of this article
17 and the lowermost beam shall meet the requirements
18 applicable to a lowermost distribution of light as set forth
19 in section twenty (b) of this article.

20 (3) In the event the motorcycle, motor-driven cycle or
21 moped is equipped with a single-beam lamp or lamps, said

22 lamp or lamps shall be so aimed that when the vehicle is
23 loaded none of the high-intensity portion of light, at a
24 distance of twenty-five feet ahead, shall project higher
25 than the level of the center of the lamp from which it
26 comes.

§17C-15-25. Number of driving lamps required or permitted.

1 (a) At all times specified in section two of this article
2 at least two lighted lamps shall be displayed, one on
3 each side at the front of every motor vehicle other than
4 a motorcycle, motor-driven cycle or moped, except when
5 such vehicle is parked subject to the regulations govern-
6 ing lights on parked vehicles.

7 (b) Whenever a motor vehicle equipped with head
8 lamps as herein required is also equipped with any
9 auxiliary lamps or a spot lamp or any other lamp on the
10 front thereof projecting a beam of intensity greater than
11 three hundred candlepower, not more than a total of four
12 of any such lamps on the front of a vehicle shall be lighted
13 at any one time when upon a highway.

§17C-15-31. Brakes—Generally.

1 (a) *Brake equipment required.*—(1) Every motor
2 vehicle, other than a motorcycle, motor-driven cycle or
3 moped, when operated upon a highway shall be equipped
4 with brakes adequate to control the movement of and
5 to stop and hold such vehicle, including two separate
6 means of applying the brakes, each of which means shall
7 be effective to apply the brakes to at least two wheels.
8 If these two separate means of applying the brakes are
9 connected in any way, they shall be so constructed that
10 failure of any one part of the operating mechanism shall
11 not leave the motor vehicle without brakes on at least
12 two wheels.

13 (2) Every motorcycle, motor-driven cycle and moped,
14 when operated upon a highway, shall be equipped with
15 at least one brake which may be operated by hand or
16 foot.

17 (3) Every trailer or semitrailer of a gross weight of

18 three thousand pounds or more when operated upon a
19 highway shall be equipped with brakes adequate to con-
20 trol the movement of and to stop and to hold such vehicle
21 and so designed as to be applied by the driver of the
22 towing motor vehicle from its cab, and said brakes
23 shall be so designed and connected that in case of an
24 accidental brakeaway of the towed vehicle the brakes
25 shall be automatically applied.

26 (4) Every new motor vehicle, trailer or semitrailer
27 hereinafter sold in this state and operated upon the high-
28 ways shall be equipped with service brakes upon all
29 wheels, with the following exceptions: (1) That trucks
30 and truck-tractors having three or more axles need not
31 have brakes on the front wheels, except when such
32 vehicles are equipped with at least two steerable axles,
33 the wheels of one such axle need not be equipped with
34 brakes, (2) any motorcycle, motor-driven cycle or moped,
35 and (3) that any semitrailer of less than one thousand
36 five hundred pounds gross weight need not be equipped
37 with brakes.

38 (5) In any combination of motor-driven vehicles,
39 means shall be provided for applying the rearmost trailer
40 brakes, of any trailer equipped with brakes, in approxi-
41 mate synchronism with the brakes on the towing vehicle
42 and developing the required braking effort on the rear-
43 most wheels at the fastest rate; or means shall be pro-
44 vided for applying braking effort first on the rearmost
45 trailer equipped with brakes; or both of the above means
46 capable of being used alternatively may be employed.

47 (6) Every such vehicle and combination of vehicles,
48 except motorcycles, motor-driven cycles and mopeds,
49 shall be equipped with parking brakes adequate to hold
50 the vehicle on any grade on which it is operated, under
51 all conditions of loading on a surface free from snow, ice
52 or loose material. The parking brakes shall be capable
53 of being applied in conformance with the foregoing re-
54 quirements by the driver's muscular effort or by spring
55 action or by equivalent means. Their operation may be
56 assisted by the service brakes or other source of power

57 provided that failure of the service brake actuation
 58 system or other power assisting mechanism will not pre-
 59 vent the parking brakes from being applied in confor-
 60 mance with the foregoing requirements. The parking
 61 brakes shall be so designed that when once applied they
 62 shall remain applied with the required effectiveness
 63 despite exhaustion of any source of energy or leakage
 64 of any kind. The same brake drums, brake shoes and
 65 lining assemblies, brake shoe anchors and mechanical
 66 brake shoe actuation mechanism normally associated
 67 with the wheel brake assemblies may be used for both
 68 the service brakes and the parking brakes. If the means
 69 of applying the parking brakes and the service brakes
 70 are connected in any way, they shall be so constructed
 71 that a failure of any one part shall not leave the vehicle
 72 without operative brakes.

73 (7) The brake shoes operating within or upon the
 74 drums on the vehicle wheels of any motor vehicle may
 75 be used for both service and hand operation.

76 (b) *Performance ability of brakes.*—Every motor
 77 vehicle or combination of motor-drawn vehicles shall be
 78 capable, at all times and under all conditions of loading,
 79 of being stopped on a dry, smooth, level road free from
 80 loose material, upon application of the service (foot)
 81 brake, within the distances specified below, or shall be
 82 capable of being decelerated at a sustained rate corre-
 83 sponding to these distances:

84		Feet to stop	Deceleration
85		from 20 miles	in feet per
86		per hour	second
87	Vehicles or combinations		
88	of vehicles having		
89	brakes on all wheels _____	30	14
90	Vehicles or combinations		
91	of vehicles not having brakes		
92	on all wheels _____	40	10.7

93 (c) *Maintenance of brakes.*—All brakes shall be main-
 94 tained in good working order and shall be so adjusted as

95 to operate as equally as practicable with respect to the
96 wheels on opposite sides of the vehicle.

§17C-15-32. Brakes on motorcycles, motor-driven cycles and mopeds.

1 (a) The commissioner is authorized to require an in-
2 spection of the brake on any motorcycle, motor-driven
3 cycle or moped and to disapprove any such brake which
4 he finds will not comply with the performance ability
5 standard set forth in section thirty-one of this article, or
6 which in his opinion is not so designed or constructed as
7 to insure reasonable and reliable performance in actual
8 use.

9 (b) The commissioner may refuse to register or may
10 suspend or revoke the registration of any vehicle referred
11 to in this section when he determines that the brake
12 thereon does not comply with the provisions of this sec-
13 tion.

14 (c) No person shall operate on any highway any vehicle
15 referred to in this section in the event the commissioner
16 has disapproved the brake equipment upon such vehicle
17 or type of vehicle.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and specifications board.

1 (a) No person shall operate or be a passenger on any
2 motorcycle or motor-driven cycle unless he is wear-
3 ing securely fastened on his head by either a neck or
4 chin strap a protective helmet designed to deflect blows,
5 resist penetration and spread impact forces. Any helmet
6 worn by an operator or passenger shall meet the perfor-
7 mance specifications established by the United States of
8 America Standards Institute, Specifications for Protective
9 Headgear for Vehicle Users, Standard Z 90.1-1966.

10 Helmets worn by operators and passengers shall be
11 coated with a reflectorized substance, or have attached
12 thereto a reflectorized material, on both sides and the back

13 thereof, with a minimum of ten square inches of coated
14 substance or attached material in each of the three lo-
15 cations.

16 (b) No person shall operate or be a passenger on any
17 motorcycle or motor-driven cycle unless he is wear-
18 ing safety, shatter-resistant eyeglasses (excluding con-
19 tact lenses), or eyegoggles or face shield that complies
20 with the performance specifications established by the
21 United States of America Standards Institute, Specifica-
22 tions for Head, Eye and Respiratory Protection Z 2.1-1959.
23 In addition, if any motorcycle, motor-driven cycle or
24 moped be equipped with a windshield or windscreen, the
25 windshield or windscreen shall be constructed of safety,
26 shatter-resistant material that complies with the perfor-
27 mance specifications established by the United States of
28 America Standards Institute, Safety Glazing Materials
29 for Glazing Motor Vehicles Operated on Land Highways,
30 Standard Z 26.1-1966.

31 (c) No person shall operate a motorcycle, motor-driven
32 cycle or moped on which the handlebars or grips are
33 more than fifteen inches higher than the uppermost part
34 of the operator's seat when the seat is not depressed in
35 any manner.

36 (d) A person operating a motorcycle, motor-driven
37 cycle or moped shall ride in a seated position facing for-
38 ward and only upon a permanent operator's seat attached
39 to the vehicle. No operator shall carry any other person
40 nor shall any other person ride on such a vehicle unless
41 the vehicle is designed to carry more than one person, in
42 which event a passenger may ride behind the operator
43 upon the permanent operator's seat if it is designed for
44 two persons, or upon another seat firmly attached to the
45 vehicle to the rear of the operator's seat and equipped
46 with footrests designed and located for use by the passen-
47 ger or in a sidecar firmly attached to the vehicle. No more
48 than two persons, the operator and one passenger, shall
49 ride the same vehicle at the same time. No person shall
50 ride sidesaddle on a seat.

51 (e) Every motorcycle, motor-driven cycle and moped

52 shall be equipped with a rearview mirror affixed to the
53 handlebars and adjusted so that the operator shall have a
54 clear view of the road and condition of traffic behind him
55 for a distance of at least two hundred feet.

56 (f) There is hereby created a three-member board
57 which shall be known as the motorcycle safety standards
58 and specifications board. The board shall be comprised of
59 the superintendent of public safety, the commissioner of
60 motor vehicles and the executive director of the West
61 Virginia safety council or a person each may designate
62 from his own agency.

63 Within thirty days after the effective date of this sec-
64 tion, the board shall meet and elect one of its members
65 chairman. The board shall meet thereafter at least twice
66 in each calendar year at a place the board shall deter-
67 mine. The board may meet more often if it deems it
68 necessary to perform its functions.

69 The board is hereby authorized to issue regulations
70 establishing standards and specifications for the protec-
71 tive helmet and eye protection devices as provided for in
72 subsections (a) and (b) of this section. Not later than
73 thirty days after its first meeting, the board shall estab-
74 lish these standards and specifications. The board may
75 issue regulations establishing standards and specifications
76 for accessory or safety equipment to be used on motor-
77 cycles, motor-driven cycles and mopeds. The board shall
78 periodically review the standards and specifications and
79 change them as necessary to comply with this section. The
80 board shall cause all standards and specifications it es-
81 tablishes to be made available to the public and to the
82 commissioner of motor vehicles.

83 (g) The commissioner of motor vehicles is hereby
84 authorized and shall, in accordance with the standards and
85 specifications established by the motorcycle safety stan-
86 dards and specifications board, approve or disapprove
87 types and makes of protective helmets, eye protection
88 devices and equipment offered for sale, purchased or used
89 by any person.

90 The commissioner of motor vehicles is hereby autho-
91 rized and shall approve or disapprove any type and make
92 of protective helmet, eye protection device or equipment
93 within fifteen days after submission to him for approval.

94 The commissioner of motor vehicles is hereby authorized
95 to establish the procedure which shall be followed when
96 any type and make of protective helmet, eye protection
97 device or equipment is submitted to him for approval.

98 The commissioner of motor vehicles, upon approving
99 any type and make of protective helmet, eye protection
100 device or equipment shall issue to the applicant a certifi-
101 cate of approval.

102 The commissioner of motor vehicles shall make avail-
103 able to the public lists of all types and makes of protec-
104 tive helmets, eye protection devices and equipment that
105 have been approved for use. All law-enforcement agencies
106 within the state shall be mailed a copy of these lists.

107 When the commissioner of motor vehicles has reason to
108 believe a type or make of protective helmet, eye protec-
109 tion device or equipment is being sold commercially that
110 does not comply with the requirements of this section, he
111 shall, after giving thirty days' previous notice to the seller,
112 conduct a hearing upon the question of compliance of the
113 particular safety device or equipment. After the hearing,
114 the commissioner shall determine whether the device or
115 equipment meets the standards and specifications estab-
116 lished by the motorcycle safety standards and specifica-
117 tions board. If it does not, the commissioner shall give
118 notice of that fact to the seller and the seller may not sell
119 the device or equipment until it is changed or modified to
120 comply with the standards and specifications established
121 by the board and approved by the commissioner. The
122 commissioner of motor vehicles shall make available to
123 the public the fact that the particular safety device or
124 equipment is not approved for use. If the device or equip-
125 ment so disapproved by the commissioner of motor ve-
126 hicles is one previously approved but which has
127 fallen below the standards and specifications estab-
128 lished by the board, he shall suspend or revoke the

129 approval issued, and he may require that the seller re-
130 place with an approved device or equipment any dis-
131 approved device or equipment sold after the notification
132 to the seller that it does not meet the proper standards
133 and specifications.

§17C-15-45. Certification labels on mopeds.

1 Every moped sold in this state shall have permanently
2 affixed to it a certification label which shall contain the
3 following information:

- 4 (1) Name of manufacturer;
- 5 (2) Month and year of manufacture;
- 6 (3) Gross vehicle weight rating (GVWR);
- 7 (4) Gross axle weight rating for front and rear axles
8 (GAWR);
- 9 (5) Vehicle identification number;
- 10 (6) Classification type; and
- 11 (7) Statement of conformance to federal standards as
12 required by federal law.

CHAPTER 66

(Com. Sub. for S. B. 217—By Mr. Brotherton, Mr. President)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections sixteen and seven-
teen, article three, chapter seventeen-a of the code of
West Virginia, one thousand nine hundred thirty-one,
as amended; and to amend and reenact sections one,
three and eight, article ten of said chapter, all relating
to motor vehicles; establishing a staggered registration
system for all trucks with gross weights of not more
than eight thousand pounds; transferring these vehicles
from Class "B" to Class "A" license registration; specify-

ing time periods within which annual registration and payment of fees is to occur; increasing fees for certain classes of motor vehicles; permitting distribution and issuance of the newly created Class A registrations by county sheriffs and specifying date thereof; and exempting from payment of registration fees one vehicle owned by totally and permanently disabled veterans.

Be it enacted by the Legislature of West Virginia:

That sections sixteen and seventeen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, three and eight, article ten of said chapter be amended and reenacted, all to read as follows:

Article

3. Original and Renewal of Registration; Issuance of Certificates of Title.

10. Fees for Registration, Licensing, etc.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-16. Expiration of registration and certificates of title.

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

§17A-3-16. Expiration of registration and certificates of title.

1 Every vehicle registration under this chapter and every
2 registration card and registration plate issued hereunder
3 shall expire at midnight on the thirtieth day of June
4 of the fiscal year for which issued: *Provided*, That the
5 commissioner may extend the period during which said
6 registration plates may be used.

7 Certificates of title need not be renewed annually but
8 shall remain valid until canceled by the department
9 for cause or upon a transfer of any interest shown there-
10 in.

11 Notwithstanding the provisions of this section or of
12 any provision of this chapter, the commissioner shall
13 adopt, for the vehicles set forth below which are sub-
14 ject to registration hereunder, a staggered registration
15 system whereby the registration of all such vehicles
16 shall be for a period of twelve consecutive calendar

17 months, the expiration dates thereof to be staggered
18 throughout the year.

19 (1) On or after the first day of July, one thousand
20 nine hundred seventy-eight, all Class A motor vehicles
21 as defined in section one, article ten of this chapter,
22 shall be registered for a period of twelve consecutive
23 calendar months. There hereby are established twelve
24 registration periods, each of which shall start on the
25 first day of each calendar month of the year and shall
26 end on the last day of the twelfth month from date of
27 beginning. The period ending January thirty-first shall
28 be designated the first period, that ending February
29 twenty-eighth (twenty-ninth) shall be designated the
30 second; that ending March thirty-first shall be designated
31 the third; that ending April thirtieth shall be designated
32 the fourth; that ending May thirty-first shall be desig-
33 nated the fifth; that ending June thirtieth shall be
34 designated the sixth; that ending July thirty-first shall
35 be designated the seventh; that ending August thirty-
36 first shall be designated the eighth; that ending Sep-
37 tember thirtieth shall be designated the ninth; that end-
38 ing October thirty-first shall be designated the tenth;
39 that ending November thirtieth shall be designated
40 the eleventh; and that ending December thirty-first shall
41 be designated the twelfth.

42 (2) All Class A motor vehicles, which are operated
43 for the first time upon the public highways of this state
44 to and including the fifteenth day of any given month
45 shall be subject to registration and payment of fee for
46 the twelve-month period commencing the first day of
47 the month of operation; such motor vehicles operated
48 for the first time upon the public highways of this state
49 on and after the sixteenth day of any given month
50 shall be subject to registration and payment of fee for
51 the twelve-month period commencing the first day of
52 the month of the next following calendar month.

53 (3) During the time necessary to accomplish the
54 change from the present system of annual registration
55 to the monthly series system, trucks with gross weights

56 of not more than eight thousand pounds, subject to regis-
57 tration on and after July first, one thousand nine hun-
58 dred seventy-eight, shall be registered for one of twelve
59 registration periods, which shall vary in length from a
60 minimum of six consecutive calendar months to a maxi-
61 mum of seventeen consecutive calendar months as here-
62 inafter provided. During this transitory period the regis-
63 tration fees shall be computed on a basis of one twelfth
64 of the annual fee per month. In the order of the receipt
65 of applications for registration of motor vehicles by
66 the owners thereof, the commissioner shall allocate to
67 each of the twelve registration periods such number
68 of motor vehicles as will, in his judgment, as uniformly
69 as practicable, distribute the clerical work of registering
70 such vehicles throughout the year. In determining the
71 number of registrations to be allocated to any given
72 period; he may take into consideration the volume of
73 registration of trucks and other vehicles not under the
74 monthly series registration system. The twelve regis-
75 tration periods necessary to accomplish the change from
76 the present system of annual registration to the monthly
77 series system are established as follows: Each period
78 shall commence July first, one thousand nine hundred
79 seventy-eight. The first period shall expire December
80 thirty-first, one thousand nine hundred seventy-eight;
81 the second, January thirty-first, one thousand nine hun-
82 dred seventy-nine; the third, February twenty-eighth,
83 one thousand nine hundred seventy-nine; the fourth,
84 March thirty-first, one thousand nine hundred seventy-
85 nine; the fifth, April thirtieth, one thousand nine hun-
86 dred seventy-nine; the sixth, May thirty-first, one thou-
87 sand nine hundred seventy-nine; the seventh, June
88 thirtieth, one thousand nine hundred seventy-nine; the
89 eighth, July thirty-first, one thousand nine hundred
90 seventy-nine; the ninth, August thirty-first, one thou-
91 sand nine hundred seventy-nine; the tenth, September
92 thirtieth, one thousand nine hundred seventy-nine; the
93 eleventh, October thirty-first, one thousand nine hundred
94 seventy-nine; and the twelfth, November thirtieth, one
95 thousand nine hundred seventy-nine.

96 (4) Motor vehicles, other than those exempted above,
97 not previously registered in this state and operated upon
98 the highways of this state for the first time after the
99 first day of July, one thousand nine hundred seventy-
100 eight, shall be registered for a full twelve-month period
101 without regard to the varying periods of registration
102 provided for during the period of change to the staggered
103 registration system: *Provided*, That the commissioner
104 may initially register a motor vehicle for less than a
105 twelve-month period when in his opinion such fractional
106 registration shall tend to fulfill the purpose of the
107 monthly series registration system.

**§17A-3-17. Application for and renewal of registration; sheriffs
authorized to issue renewals of registration for
certain vehicles.**

1 Application for renewal of a vehicle registration shall
2 be made by the vehicle owner by proper application
3 and payment of taxes and registration fees provided by
4 law.

5 The department may receive applications for renewal
6 of any vehicle registration and each sheriff may receive
7 applications from residents in his county for renewal
8 of any Class A or G vehicle registration: *Provided*, That
9 Class A vehicle registrations for trucks with gross
10 weights of not more than eight thousand pounds may
11 not be received for renewal by a sheriff until the first
12 day of January, one thousand nine hundred eighty. The
13 department and each sheriff shall issue the renewals
14 of registration each receives, respectively, in accordance
15 with all of the provisions in this article pertaining to
16 renewal of vehicle registration including, but not lim-
17 ited to, the payment of the taxes and fees required
18 thereunder.

19 Each sheriff may charge a service fee of one dollar
20 for each renewal of a Class A or G vehicle registration
21 he issues which he shall pay into the county general
22 fund.

23 On the first day of each month, each sheriff shall pay

24 over to the commissioner all fees he collected during
25 the preceding month for renewal of Class A and G
26 vehicle registrations, except his service fees. Such
27 payment shall be accompanied by a report showing
28 the name of the county, the name and address of the
29 person who obtained the registration and paid the regis-
30 tration fee therefor, the vehicle registered, the registra-
31 tion number, the date the registration was issued, the
32 signature of the sheriff and any other information the
33 commissioner may reasonably require in order to main-
34 tain the functions and records of the department. The
35 commissioner shall deposit all fees he receives from the
36 sheriffs for renewal of Class A and G vehicle registra-
37 tions in the state treasury to the credit of the state
38 road fund as provided in section twenty-one, article
39 two of this chapter.

40 The commissioner shall provide each sheriff with the
41 necessary forms, supplies, registration plates, registra-
42 tion decals and instructions necessary to enable them to
43 perform the duties and functions specified in this sec-
44 tion.

45 No person may display upon a vehicle a new regis-
46 tration plate or registration decal prior to the first day
47 of the month preceding the new registration period.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

§17A-10-8. Vehicles exempt from payment of registration fees.

§17A-10-1. Classification of vehicles for purpose of registration.

1 Vehicles subject to registration under the provisions
2 of this chapter shall be placed in the following classes
3 for the purpose of registration:

4 Class A. Motor vehicles of passenger type and trucks
5 with a gross weight of not more than eight thousand
6 pounds, other than those operated for compensation;

7 Class B. Motor vehicles designated as trucks with a
8 gross weight of more than eight thousand pounds, truck

9 tractors, or road tractors other than those operated for
10 compensation;

11 Class C. All trailers and semitrailers, except those
12 operated for compensation, and except house trailers
13 and trailers or semitrailers designed to be drawn by
14 Class A motor vehicles and having a gross weight of
15 less than two thousand pounds;

16 Class E. Motor vehicles designated as trucks, truck
17 tractors, or road tractors operated for transportation of
18 property for compensation, but being exempt from the
19 operating jurisdiction of the public service commission,
20 and for which a statement of exemption has been re-
21 ceived from the public service commission;

22 Class G. Motorcycles;

23 Class H. Motor vehicles operated regularly for the
24 transportation of persons for compensation under a cer-
25 tificate of convenience and necessity or contract carrier
26 permit issued by the public service commission;

27 Class J. Motor vehicles operated for transportation
28 of persons for compensation by common carriers, not
29 running over a regular route or between fixed termini;

30 Class K. Motor vehicles designated as trucks, truck
31 tractors, or road tractors operated for transportation of
32 property for compensation under a certificate of conveni-
33 ence and necessity or a contract carrier permit issued
34 by the public service commission;

35 Class L. All trailers and semitrailers used for trans-
36 portation of property for compensation;

37 Class R. House trailers;

38 Class S. Special mobile equipment as defined in sub-
39 division (r), section one, article one of this chapter;

40 Class T. Trailers or semitrailers of a type designed
41 to be drawn by Class A vehicles and having a gross
42 weight of less than two thousand pounds;

43 Class U. Passenger motor vehicles rented for com-
44 pensation without a driver;

45 Class Farm Truck. Motor vehicles designated as trucks
46 having a minimum gross weight of more than eight
47 thousand pounds and a maximum gross weight of sixty-
48 four thousand pounds, used exclusively in the conduct
49 of a farming business, engaged in the production of
50 agricultural products by means of (a) the planting, cul-
51 tivation and harvesting of agricultural, horticultural,
52 vegetable or other products of the soil, (b) the raising,
53 feeding and care of livestock, poultry, bees and dairy
54 cattle. Such farm truck shall be used only for the trans-
55 portation of agricultural products so produced by the
56 owner thereof, or for the transportation of agricultural
57 supplies used in such production, or for private pas-
58 senger use.

**§17A-10-3. Registration fees for vehicles equipped with pneu-
matic tires.**

1 The following registration fees for the classes indicated
2 shall be paid annually to the department for the regis-
3 tration of vehicles subject to registration hereunder
4 when equipped with pneumatic tires:

5 Class A. The registration fee for all motor vehicles
6 of this class shall be as follows:

7 (1) For motor vehicles of a weight of three thousand
8 pounds or less—twenty-five dollars.

9 (2) For motor vehicles of a weight of three thousand
10 and one pounds to four thousand pounds—thirty dol-
11 lars.

12 (3) For motor vehicles of a weight in excess of four
13 thousand pounds—thirty-six dollars.

14 (4) For motor vehicles designed as trucks with de-
15 clared gross weights of four thousand pounds or less—
16 twenty-five dollars.

17 (5) For motor vehicles designed as trucks with de-
18 clared gross weights of four thousand and one pounds
19 to eight thousand pounds—thirty dollars.

20 For the purpose of determining the weight the actual
21 weight of the vehicle shall be taken: *Provided*, That

22 for vehicles owned by churches, or by trustees for
23 churches, which vehicles are regularly used for trans-
24 porting parishioners to and from church services, no
25 license fee shall be charged, but notwithstanding such
26 exemption, the certificate of registration and license
27 plates shall be obtained the same as other cards and
28 plates under this article.

29 Class B, Class E and Class K. The registration fee
30 for all motor vehicles of these three classes shall be as
31 follows:

32 (1) For declared gross weights of eight thousand
33 and one pounds to sixteen thousand pounds—twenty-
34 eight dollars plus five dollars for each one thousand
35 pounds or fraction thereof that the gross weight of such
36 vehicle or combination of vehicles exceeds eight thou-
37 sand pounds.

38 (2) For declared gross weights greater than sixteen
39 thousand pounds—seventy-eight dollars and fifty cents
40 plus ten dollars for each one thousand pounds or fraction
41 thereof that the gross weight of such vehicle or com-
42 bination of vehicles exceeds sixteen thousand pounds.

43 If the declared gross weight of a Class B, Class E or
44 Class K motor vehicle includes the gross weight of a
45 Class C or Class L vehicle used in combination with
46 such Class B, Class E or Class K motor vehicle and the
47 declared gross weight of the vehicles constituting such
48 combination exceeds sixteen thousand pounds and the
49 registration fee prescribed hereunder for such Class C
50 or Class L vehicle has been paid, there shall be deducted
51 from the registration fee for such Class B, Class E or
52 Class K motor vehicle the amount of seventeen dollars
53 and fifty cents; but, there shall be no such deduction
54 where the declared gross weight of the vehicles con-
55 stituting such combination is less than sixteen thousand
56 and one pounds.

57 Class C and Class L. The registration fee for all ve-
58 hicles of these two classes shall be seventeen dollars
59 and fifty cents.

60 Class G. The registration fee for each motorcycle shall
61 be eight dollars.

62 Class H. The registration fee for all vehicles for this
63 class operating entirely within the state shall be five
64 dollars; and for vehicles engaged in interstate trans-
65 portation of persons, the registration fee shall be fees
66 provided by this section for Class B, Class E and Class
67 K reduced by the amount that the mileage of such ve-
68 hicles operated in states other than West Virginia bears
69 to the total mileage operated by such vehicles in all
70 states under a formula to be established by the depart-
71 ment of motor vehicles.

72 Class J. The registration fee for all motor vehicles
73 of this class shall be eighty-five dollars. Ambulances
74 and hearses used exclusively as such shall be exempted
75 from the above special fees.

76 Class R. The registration fee for all vehicles of this
77 class shall be twelve dollars.

78 Class S. The registration fee for all vehicles of this
79 class shall be seventeen dollars and fifty cents.

80 Class T. The registration fee for all vehicles of this
81 class shall be eight dollars.

82 Class U. The registration fee for all vehicles of this
83 class shall be fifty-seven dollars and fifty cents.

84 Class Farm Truck. The registration fee for all motor
85 vehicles of this class shall be as follows: (1) For farm
86 trucks of declared gross weights of eight thousand and
87 one pounds to sixteen thousand pounds—thirty dollars;
88 (2) for farm trucks of declared gross weights of sixteen
89 thousand and one pounds to twenty-two thousand pounds
90 —sixty dollars; (3) for farm trucks of declared gross
91 weights of twenty-two thousand and one pounds to
92 twenty-eight thousand pounds—ninety dollars; (4) for
93 farm trucks of declared gross weights of twenty-
94 eight thousand and one pounds to thirty-four thou-
95 sand pounds—one hundred fifteen dollars; (5) for farm
96 trucks of declared gross weights of thirty-four thousand

97 and one pounds to forty-four thousand pounds—one
98 hundred sixty dollars; (6) for farm trucks of declared
99 gross weights of forty-four thousand and one pounds
100 to fifty-four thousand pounds—two hundred five dol-
101 lars; and (7) for farm trucks of declared gross weights
102 of fifty-four thousand and one pounds to sixty-four thou-
103 sand pounds—two hundred fifty dollars.

§17A-10-8. Vehicles exempt from payment of registration fees.

1 The following specified vehicles shall be exempt from
2 the payment of any registration fees:

3 (1) Any vehicle owned or operated by the United
4 States government, the state of West Virginia or any
5 of their political subdivisions. The proper representa-
6 tive of the United States government, the state of West
7 Virginia, or any of their political subdivisions shall make
8 an application for registration for the vehicle and
9 the registration plate or plates issued for the vehicle
10 shall be displayed as provided in this chapter.

11 (2) Any fire vehicle owned or operated by a volun-
12 teer fire department organized for the protection of
13 community property.

14 (3) Any ambulance or any other emergency rescue
15 vehicle owned or operated by a nonprofit, charitable
16 organization, and used exclusively for charitable pur-
17 poses.

18 (4) Any vehicle owned by a disabled veteran as de-
19 fined by the provisions of Public Law 663 of the 79th
20 Congress of the United States, or Public Law 187 of
21 the 82nd Congress of the United States, or Public Law
22 77 of the 90th Congress of the United States; except
23 for vehicles used for hire which are owned by disabled
24 veterans.

25 (5) Not more than one vehicle owned by a veteran
26 with a hundred percent total and permanent service-
27 connected disability as certified by the director of the
28 Department of Veterans' Affairs of West Virginia and
29 not used for commercial purposes.

CHAPTER 67

(S. B. 207—By Mr. Steptoe and Mr. Hinkle)

[Passed March 9, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-c, relating to nonresident motorist violations of state traffic and motor vehicle laws, and authorizing the governor to execute the nonresident violator compact on behalf of West Virginia with all other jurisdictions legally joining therein.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. NONRESIDENT VIOLATOR COMPACT.

§17B-1C-1. Authorization for entry into nonresident violator compact.

§17B-1C-2. Definitions.

§17B-1C-3. Compact administrator.

§17B-1C-4. Entry into other nonresident violator compacts.

§17B-1C-1. Authorization for entry into nonresident violator compact.

1 The governor of this state is hereby authorized and
2 directed to execute a compact on behalf of the state of
3 West Virginia with any state of the United States legally
4 joining therein in form substantially as follows:

5 ARTICLE I. FINDINGS, DECLARATION OF POLICY AND PURPOSE.

6 A. The party jurisdictions find that:

7 (1) In most instances, a motorist who is cited for a
8 traffic violation in a jurisdiction other than his home
9 jurisdiction:

10 (a) Must post collateral or bond to secure appearance
11 for trial at a later date; or

12 (b) If unable to post collateral or bond, is taken into
13 custody until the collateral or bond is posted; or

14 (c) Is taken directly to court for his trial to be held.

15 (2) In some instances, the motorist's driver's license
16 is deposited as collateral to be returned after he has
17 complied with the terms of the citation.

18 (3) The purpose of the practices described in para-
19 graphs (1) and (2) above is to ensure compliance with
20 the terms of a traffic citation by the motorist who, if per-
21 mitted to continue on his way after receiving the traffic
22 citation, could return to his home jurisdiction and dis-
23 regard his duty under the terms of the traffic citation.

24 (4) A motorist receiving a traffic citation in his home
25 jurisdiction is permitted, except for certain violations, to
26 accept the citation from the officer at the scene of the
27 violation and to immediately continue on his way after
28 promising or being instructed to comply with the terms
29 of the citation.

30 (5) The practice described in paragraph (1) above
31 causes unnecessary inconvenience and, at times, a hard-
32 ship for the motorist who is unable at the time to post
33 collateral, furnish a bond, stand trial or pay the fine and
34 thus is compelled to remain in custody until some ar-
35 rangement can be made.

36 (6) The deposit of a driver's license as a bail bond, as
37 described in paragraph (2) above, is viewed with dis-
38 favor.

39 (7) The practices described herein consume an undue
40 amount of law-enforcement time.

41 B. It is the policy of the party jurisdictions to:

42 (1) Seek compliance with the laws, ordinances and
43 administrative rules and regulations relating to the oper-
44 ation of motor vehicles in each of the jurisdictions.

45 (2) Allow motorists to accept a traffic citation for cer-
46 tain violations and proceed on their way without delay

47 whether or not the motorist is a resident of the jurisdiction
48 in which the citation was issued.

49 (3) Extend cooperation to its fullest extent among the
50 jurisdictions, each as to the other, for obtaining compli-
51 ance with the terms of a traffic citation issued in one
52 jurisdiction to a resident of another jurisdiction.

53 (4) Maximize effective utilization of law-enforcement
54 personnel and assist court systems in the efficient dis-
55 position of traffic violations.

56 C. The purpose of this compact is to:

57 (1) Provide a means through which jurisdictions may
58 participate in a reciprocal program to effectuate the
59 policies enumerated in paragraph B above, in a uniform
60 and orderly manner.

61 (2) Provide for the fair and impartial treatment of
62 traffic violators operating within party jurisdiction in
63 recognition of the motorist's right of due process and the
64 sovereign status of a party jurisdiction.

65 **ARTICLE II. DEFINITIONS.**

66 In the nonresident violator compact, the following
67 words have the meaning indicated, unless the context
68 requires otherwise.

69 (1) "Citation" means any summons, ticket or other
70 official document issued by a police officer for a traffic
71 violation containing an order which requires the motorist
72 to respond.

73 (2) "Collateral" means any cash or other security
74 deposited to secure an appearance for trial, following the
75 issuance by a police officer of a citation for a traffic
76 violation.

77 (3) "Court" means a court of law or traffic tribunal.

78 (4) "Driver's license" means any license or privilege
79 to operate a motor vehicle issued under the laws of the
80 home jurisdiction.

81 (5) "Home jurisdiction" means the jurisdiction that
82 issued the driver's license of the traffic violator.

83 (6) "Issuing jurisdiction" means the jurisdiction in
84 which the traffic citation was issued to the motorist.

85 (7) "Jurisdiction" means a state, territory or possession
86 of the United States, the District of Columbia or the
87 Commonwealth of Puerto Rico.

88 (8) "Motorist" means a driver of a motor vehicle operat-
89 ing in a party jurisdiction other than the home jurisdic-
90 tion.

91 (9) "Personal recognizance" means an agreement by a
92 motorist made at the time of issuance of the traffic
93 citation that he will comply with the terms of that traffic
94 citation.

95 (10) "Police officer" means any individual authorized
96 by the party jurisdiction to issue a citation for a traffic
97 violation.

98 (11) "Terms of the citation" means those options
99 expressly stated upon the citation.

100 ARTICLE III. PROCEDURE FOR ISSUING JURISDICTION.

101 A. When issuing a citation for a traffic violation, a
102 police officer shall issue the citation to a motorist who
103 possesses a driver's license issued by a party jurisdiction
104 and shall not, subject to the exceptions noted in paragraph
105 B of this article, require the motorist to post collateral
106 to secure appearance, if the officer receives the motorist's
107 signed personal recognizance that he will comply with the
108 terms of the citation.

109 B. Personal recognizance is acceptable only if not
110 prohibited by law. If mandatory appearance is required,
111 it must take place immediately following issuance of the
112 citation.

113 C. Upon failure of a motorist to comply with the terms
114 of a traffic citation, the appropriate official shall report
115 the failure to comply to the licensing authority of the
116 jurisdiction in which the traffic citation was issued. The
117 report shall be made in accordance with procedures
118 specified by the issuing jurisdiction and shall contain
119 information as specified in the compact manual as mini-

120 mum requirements for effective processing by the recipient
121 jurisdiction.

122 D. Upon receipt of the report, the licensing authority
123 of the issuing jurisdiction shall transmit to the licensing
124 authority in the home jurisdiction of the motorist the
125 information in a form and content as contained in the
126 compact manual.

127 E. The licensing authority of the issuing jurisdiction
128 may not suspend the privilege of a motorist for whom a
129 report has been transmitted.

130 F. The licensing authority of the issuing jurisdiction
131 shall not transmit a report on any violation if the date of
132 transmission is more than six months after the date on
133 which the traffic citation was issued.

134 G. The licensing authority of the issuing jurisdiction
135 shall not transmit a report on any violation where the
136 date of issuance of the citation predates the most recent
137 of the effective dates of entry for the two jurisdictions
138 affected.

139 ARTICLE IV. PROCEDURE FOR HOME JURISDICTION.

140 A. Upon receipt of a report of a failure to comply
141 from the licensing authority of the issuing jurisdiction,
142 the licensing authority of the home jurisdiction shall
143 notify the motorist and initiate a suspension action, in
144 accordance with the home jurisdiction's procedures, to
145 suspend the motorist's driver's license until satisfactory
146 evidence of compliance with the terms of the traffic
147 citation has been furnished to the home jurisdiction
148 licensing authority. Due process safeguards will be af-
149 forded.

150 B. The licensing authority of the home jurisdiction
151 shall maintain a record of actions taken and make reports
152 to issuing jurisdictions as provided in the compact manual.

153 ARTICLE V. APPLICABILITY OF OTHER LAWS.

154 Except as expressly required by provisions of this
155 compact, nothing contained herein shall be construed to
156 affect the right of any party jurisdiction to apply any of

157 its other laws relating to licenses to drive to any person
158 or circumstance, or to invalidate or prevent any driver
159 license agreement or other cooperative arrangement
160 between a party jurisdiction and a nonparty jurisdiction.

161 **ARTICLE VI. COMPACT ADMINISTRATOR PROCEDURES.**

162 A. For the purpose of administering the provisions of
163 this compact and to serve as a governing body for the
164 resolution of all matters relating to the operation of this
165 compact, a board of compact administrators is created.
166 The board shall be composed of one representative from
167 each party jurisdiction to be known as the compact ad-
168 ministrator. The compact administrator shall be appointed
169 by the jurisdiction executive and will serve and be
170 subject to removal in accordance with the laws of the
171 jurisdiction he represents. A compact administrator may
172 provide for the discharge of his duties and the perform-
173 ance of his functions as a board member by an alternate.
174 An alternate may not be entitled to serve unless
175 written notification of his identity has been given to the
176 board.

177 B. Compact administrators shall be entitled to one
178 vote each on the board of directors. No action of the
179 board shall be binding unless taken at a meeting at which
180 a majority of the total number of votes on the board are
181 cast in favor. Action by the board shall be only at a
182 meeting at which a majority of the party jurisdictions
183 are represented.

184 C. The board shall elect annually, from its member-
185 ship, a chairman and a vice chairman.

186 D. The board shall adopt bylaws, not inconsistent with
187 the provisions of this compact or the laws of a party juris-
188 diction, for the conduct of its business and shall have
189 the power to amend and rescind its bylaws.

190 E. The board may accept for any of its purposes and
191 functions under this compact any and all donations, and
192 grants of money, equipment, supplies, materials and
193 services, conditional or otherwise, from any jurisdiction,
194 the United States, or any other governmental agency
195 and may receive, utilize and dispose of the same.

196 F. The board may contract with, or accept services or
197 personnel from, any government or intergovernmental
198 agency, person, firm or corporation, or any private non-
199 profit organization or institution.

200 G. The board shall formulate all necessary procedures
201 and develop uniform forms and documents for administer-
202 ing the provisions of this compact. All procedures and
203 forms adopted pursuant to board action shall be contained
204 in the compact manual.

205 ARTICLE VII. ENTRY INTO COMPACT AND WITHDRAWAL.

206 A. This compact shall become effective when it has
207 been adopted by at least two jurisdictions.

208 B. (1) Entry into the compact shall be made by a
209 resolution of ratification executed by the authorized
210 officials of the applying jurisdiction and submitted to the
211 chairman of the board.

212 (2) The resolution shall be in a form and content as
213 provided in the compact manual and shall include state-
214 ments that in substance are as follows:

215 (a) A citation of the authority by which the jurisdic-
216 tion is empowered to become a party to this compact.

217 (b) Agreement to comply with the terms and provisions
218 of the compact.

219 (c) That compact entry is with all jurisdictions then
220 party to the compact and with any jurisdiction that
221 legally becomes a party to the compact.

222 (3) The effective date of entry shall be specified by
223 the applying jurisdiction, but it shall not be less than
224 sixty days after notice has been given by the chairman of
225 the board of compact administrators or by the secretariat
226 of the board to each party jurisdiction that the resolution
227 from the applying jurisdiction has been received.

228 C. A party jurisdiction may withdraw from this com-
229 pact by official written notice to the other party juris-
230 dictions, but a withdrawal shall not take effect until ninety
231 days after notice of withdrawal is given. The notice shall

232 be directed to the compact administrator of each member
233 jurisdiction. No withdrawal shall affect the validity of
234 this compact as to the remaining party jurisdictions.

235

ARTICLE VIII. EXCEPTIONS.

236 The provisions of this compact shall not apply to
237 parking or standing violations, highway weight limit
238 violations and violations of law governing the transporta-
239 tion of hazardous materials.

240

ARTICLE IX. AMENDMENTS TO THE COMPACT.

241 A. This compact may be amended from time to time.
242 Amendments shall be presented in resolution form to the
243 chairman of the board of compact administrators and
244 may be initiated by one or more party jurisdictions.

245 B. Adoption of an amendment shall require endorse-
246 ment of all party jurisdictions and shall become effective
247 thirty days after the date of the last endorsement.

248 C. Failure of a party jurisdiction to respond to the
249 compact chairman within one hundred and twenty days
250 after receipt of the proposed amendment shall constitute
251 endorsement.

252

ARTICLE X. CONSTRUCTION AND SEVERABILITY.

253 This compact shall be liberally construed so as to
254 effectuate the purposes stated herein. The provisions of
255 this compact shall be severable and if any phrase, clause,
256 sentence or provision of this compact is declared to be
257 contrary to the constitution of any party jurisdiction or of
258 the United States or the applicability thereof to any gov-
259 ernment, agency, person or circumstance, the compact
260 shall not be affected thereby. If this compact shall be
261 held contrary to the constitution of any jurisdiction party
262 thereto, the compact shall remain in full force and effect
263 as to the remaining jurisdictions and in full force and
264 effect as to the jurisdiction affected as to all severable
265 matters.

266

ARTICLE XI.

267 This compact shall be known as the "Nonresident
268 Violator Compact."

§17B-1C-2. Definitions.

1 (1) As used in this article, the term "licensing author-
2 ity," with reference to this state, means the department
3 of motor vehicles. The department shall furnish to the
4 licensing authorities of any other party state any informa-
5 tion or documents reasonably necessary to facilitate the
6 administration of Articles III and IV and shall maintain
7 and periodically distribute to every court of record and
8 magistrate, every sheriff and municipal chief of police
9 and the department of public safety a current list of all
10 states that have executed the compacts as provided in
11 this article.

12 (2) As used in this article, the term "jurisdiction ex-
13 ecutive," with reference to this state, means the gover-
14 nor of this state.

15 (3) As used in Section C, Article III of section one of
16 this article, the term "appropriate official," with reference
17 to this state, refers to a magistrate, his clerk, or a judge
18 or clerk of a court of record.

§17B-1C-3. Compact administrator.

1 The compact administrator, as provided for in Article
2 VI, section one of this article, is the commissioner of the
3 department of motor vehicles. The commissioner shall
4 not be entitled to any additional compensation for service
5 as administrator, but shall be entitled to reimbursement
6 for all reasonable and necessary expenses actually in-
7 curred in discharging the duties and responsibilities as
8 administrator in the same manner as for other such ex-
9 penses incurred in discharging any other duties or re-
10 sponsibilities of the department of motor vehicles.

§17B-1C-4. Entry into other nonresident violator compacts.

1 Inasmuch as other states and the District of Columbia
2 have entered into nonresident violator compacts which
3 are similar in purpose to the compact set forth in section
4 one of this article, the governor is authorized to execute
5 a nonresident violator compact on behalf of this state
6 with each of these jurisdictions.

CHAPTER 68

(S. B. 254—By Mr. Steptoe and Mr. Jones)

[Passed March 11, 1978; in effect July 1, 1978. 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 one-a, relating to motor vehicles; requiring surrender of licenses from other states or jurisdictions prior to issuance of driver's license from this state; allowing sworn affidavits to be substituted in certain instances; and requiring application of all other fees, driver examinations and other provisions of motor vehicle laws.

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 one-a, to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

1 On and after the first day of July, one thousand nine
2 hundred seventy-eight, the department of motor vehicles
3 shall not issue an operator's or chauffeur's license to a
4 person who holds a valid license to operate a motor vehicle
5 issued by another state or jurisdiction unless or until the
6 applicant shall surrender to the department the foreign
7 license, or such person has signed and submitted to the
8 department an affidavit to the effect that he has surren-
9 dered all valid licenses issued to him by other states
10 or jurisdictions. Any surrendered license issued by any
11 other state or jurisdiction shall be returned to the depart-
12 ment of motor vehicles or similar agency in that state
13 or jurisdiction together with a notice that the person who

14 surrendered the license has been licensed in this state. It
15 shall be unlawful for a person to possess more than one
16 valid driver's license at any time: *Provided*, That a person
17 may retain a license issued by another state or jurisdiction
18 if the license was issued for commercial purposes only
19 and is required for operation of a commercial vehicle in
20 that state or jurisdiction.

21 All other applicable provisions of this article relating
22 to issuance, fees, expiration and renewal of licenses, and
23 driver examination of applicants shall also apply to this
24 section.

CHAPTER 69

(S. B. 195—By Mr. Steptoe)

[Passed March 6, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; requiring that applicant for operator's or chauffeur's license shall state upon application that license has been suspended or revoked only if such suspension or revocation has occurred within five years next preceding the application.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

1 Every application for an instruction permit or for an
2 operator's or chauffeur's license shall be made upon a form

3 furnished by the department. Every application shall be
4 accompanied by the proper fee and payment of such fee
5 shall entitle the applicant to not more than three attempts
6 to pass the examination within a period of sixty days from
7 the date of application, except that no applicant may be
8 examined twice within a period of one week.

9 Every said application shall state the full name, date of
10 birth, sex, and residence address of the applicant, and
11 briefly describe the applicant, and shall state whether the
12 applicant has theretofore been licensed as an operator or
13 chauffeur, and, if so, when and by what state or country,
14 and whether any such license has ever been suspended or
15 revoked within the five years next preceding the date of
16 application, or whether an application has ever been re-
17 fused, and, if so, the date of and reason for such suspen-
18 sion, revocation or refusal, and such other pertinent in-
19 formation as the commissioner may require.

CHAPTER 70

(S. B. 11—By Miss Herndon and Mr. Kusic, by request)

[Passed February 14, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the termination date for the period in which studded tires are allowed to be used on highways from the first day of April to the fifteenth day of April each year.

Be it enacted by the Legislature of West Virginia:

That section thirty-seven, 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-15-37. Tire equipment restrictions; rules and regulations as to certain tires.**

1 (a) Every solid rubber tire on a vehicle shall have
2 rubber on its entire traction surface at least one inch
3 thick above the edge of the flange of the entire periphery.

4 (b) No person shall operate or move on any highway
5 any motor vehicle, trailer or semitrailer having any metal
6 tire in contact with the roadway.

7 (c) No tire on a vehicle moved on a highway shall have
8 on its periphery any block, stud, flange, cleat or spike or
9 any other protuberance of any material other than rubber
10 which projects beyond the tread of the traction surface of
11 the tire, except that (1) it shall be permissible to use
12 farm machinery with tires having protuberances which
13 will not injure the highway, (2) it shall be permissible to
14 use tire chains of reasonable proportions upon any vehicle
15 when required for safety because of snow, ice or other
16 conditions tending to cause a vehicle to skid, and (3) it
17 shall be permissible to use studded tires during the period
18 from November first of each year until April fifteenth of
19 the following year: *Provided*, That in the interest of
20 highway maintenance, no vehicle moved on a highway,
21 other than school buses, shall be equipped with studded
22 tires which are operational with a recommended air
23 pressure greater than forty pounds per square inch.

24 (d) No studded tires or chains shall be sold or used
25 within the state of West Virginia which do not meet the
26 specifications established by the rules and regulations
27 which the commissioner of highways shall promulgate,
28 but the commissioner may not by those rules and regula-
29 tions prohibit the use of studded tires or chains within
30 the state.

31 (e) The commissioner of highways and local authorities
32 in their respective jurisdictions may in their discretion
33 issue special permits authorizing the operation upon the
34 highway of traction engines or tractors having movable
35 tracks with transverse corrugations upon the periphery of
36 such movable tracks or farm tractors or other farm

37 machinery, the operation of which upon a highway would
38 otherwise be prohibited under this chapter.

CHAPTER 71

(S. B. 210—By Mr. Steptoe)

[Passed March 8, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to written reports of motor vehicle accidents to be filed with the department of motor vehicles when the resulting damage exceeds two hundred fifty dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-1. Application of article.

1 The provisions of this article shall apply to the driver
2 and owner of any vehicle of a type subject to registration
3 under the motor vehicle laws of this state which is in
4 any manner involved in an accident upon any street or
5 highway within this state which accident has resulted
6 in damage to the property of any one person in excess
7 of two hundred fifty dollars or in bodily injury to or in
8 the death of any person in respect to which accident report
9 must be made to the commissioner under the laws of this
10 state.

CHAPTER 72

(H. B. 1087—By Mr. Bryan and Mr. Ballouz)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen and nineteen, article nineteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal electric power systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; right of eminent domain; cost estimates; provisions for interest and issuance of revenue bonds; rates for services; bonds payable solely from revenues; not to constitute municipal indebtedness; lien of bondholders; covenants with bondholders; operating contract; rates for services to be adequate to any bonds; service charges; sinking fund; discontinuance of power service for nonpayment of charges; bonds for improvement; system of accounts; protection of bondholder's rights; federal grants and loans; alternative method for constructing electric power systems; alternative procedure for constructing additions to electric power system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

§8-19-1. Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definition.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

PART IV. REVENUE BOND FINANCING.

- §8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.
- §8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.
- §8-19-8. Lien of bondholders.
- §8-19-9. Covenants with bondholders.
- §8-19-10. Operating contract.
- §8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.
- §8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.
- §8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.
- §8-19-14. Bonds for additions, betterments and improvements.
- §8-19-15. System of accounts; audit.
- §8-19-16. Protection and enforcement of rights of bondholders, etc.; receivership.

PART V. GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY.

- §8-19-17. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.
- §8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

- §8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

PART I. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS AUTHORIZED; DEFINITION.

- §8-19-1. **Acquisition and operation of municipal waterworks systems; construction of improvements to municipal electric power systems; extension beyond corporate limits; definition.**

1 Subject to and in accordance with the provisions of this
 2 article, any municipality may acquire, construct, establish,
 3 extend, equip, repair, maintain and operate, or lease to others
 4 for operation, a waterworks system, or construct, main-
 5 tain and operate additions, betterments and improvements
 6 to an existing waterworks system or an existing electric

7 power system, within the corporate limits of said munici-
8 pality and within the area extending twenty miles beyond
9 the corporate limits of such municipality, notwithstanding
10 any provision or limitation to the contrary in any other
11 law or charter: *Provided*, That such municipality shall not
12 serve or supply water facilities or electric power facilities
13 or services within the corporate limits of any other munici-
14 pality without the consent of the governing body of such
15 other municipality.

16 When used in this article, the term "waterworks system"
17 shall be construed to mean and include a waterworks system
18 in its entirety or any integral part thereof, including mains,
19 hydrants, meters, valves, standpipes, storage tanks, pump
20 tanks, pumping stations, intakes, wells, impounding reservoirs,
21 pumps, machinery, purification plants, softening apparatus,
22 and all other facilities necessary, appropriate, useful, con-
23 venient or incidental in connection with or to a water supply
24 system.

25 When used in this article, the term "electric power system"
26 means a system or facility which produces electric power in
27 its entirety or any integral part thereof, including, but not
28 limited to, power lines and wires, power poles, guy wires,
29 insulators, transformers, generators, cables, power line towers,
30 voltage regulators, meters, power substations, machinery and
31 all other facilities necessary, appropriate, useful or con-
32 venient or incidental in connection with or to an electric
33 power supply system.

PART III. RIGHT OF EMINENT DOMAIN.

§8-19-3. Right of eminent domain; limitations.

1 For the purpose of acquiring, constructing, establishing or
2 extending any waterworks system, or for the purpose of
3 constructing any additions, betterments or improvements
4 to any waterworks or electric power system, or for the
5 purpose of acquiring any property necessary, appropriate,
6 useful, convenient or incidental for or to any waterworks or
7 electric power system, under the provisions of this article,
8 the municipality shall have the right of eminent domain as
9 provided in chapter fifty-four of this code: *Provided*, That

10 such right of eminent domain for the acquisition of a com-
11 plete privately owned waterworks system shall not be exer-
12 cised without prior approval of the public service com-
13 mission, and in no event shall any municipality construct,
14 establish or extend beyond the corporate limits of said
15 municipality a municipal waterworks or electric power system
16 under the provisions of this article to supply service in
17 competition with an existing privately or municipally owned
18 waterworks or electric power system in such municipality or
19 within the proposed extension of such system, unless a certifi-
20 cate of public convenience and necessity therefor shall have
21 been issued by the public service commission.

PART IV. REVENUE BOND FINANCING.

§8-19-4. Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.

1 Whenever a municipality shall, under the provisions of this
2 article, determine to acquire, by purchase or otherwise, con-
3 struct, establish, extend or equip a waterworks system, or to
4 construct any additions, betterments or improvements to any
5 waterworks or electric power system, it shall cause an estimate
6 to be made of the cost thereof, and shall, by ordinance, provide
7 for the issuance of revenue bonds under the provisions of this
8 article, which ordinance shall set forth a brief description of the
9 contemplated undertaking, the estimated cost thereof, the
10 amount, rate or rates of interest, the time and place of payment,
11 and other details in connection with the issuance of the bonds.
12 Such bonds shall be in such form and shall be negotiated in
13 such manner and upon such terms as the governing body of
14 such municipality may by ordinance specify. All such bonds
15 and the interest thereon, and all properties and revenues and in-
16 come derived from such waterworks or electric power system,
17 shall be exempt from all taxation by this state, or any county,
18 municipality, political subdivision or agency thereof. Such
19 bonds shall bear interest at not more than eight percent per an-
20 num, payable semiannually, and shall be payable at such times,
21 not exceeding forty years from their date, and at such place or
22 places, within or without the state, as shall be prescribed in the
23 ordinance providing for their issuance. Such ordinance shall
24 also declare that a statutory mortgage lien shall exist upon the

25 property so to be acquired, constructed, established, extended
26 or equipped, fix minimum rates or charges for water to be col-
27 lected prior to the payment of all of said bonds and shall pledge
28 the revenues derived from the waterworks or electric power
29 system for the purpose of paying such bonds and interest there-
30 on, which pledge shall definitely fix and determine the amount
31 of revenues which shall be necessary to be set apart and
32 applied to the payment of the principal of and interest
33 upon the bonds and the proportion of the balance of such
34 revenues, which are to be set aside as a proper and adequate
35 depreciation account, and the remainder shall be set aside
36 for the reasonable and proper maintenance and operation
37 thereof. The rates or charges to be charged for the services
38 from such waterworks or electric power system shall be
39 sufficient at all times to provide for the payment of interest
40 upon all bonds and to create a sinking fund to pay the
41 principal thereof as and when the same become due, and
42 reasonable reserves therefor, and to provide for the repair,
43 maintenance and operation of the waterworks or electric
44 power system, and to provide an adequate depreciation fund,
45 and to make any other payments which shall be required or
46 provided for in the ordinance authorizing the issuance of
47 said bonds.

§8-19-7. Bonds payable solely from revenues; not to constitute municipal indebtedness.

1 Bonds issued under the provisions of this article shall be
2 payable solely from the revenues derived from such water-
3 works or electric power system, and such bonds shall not
4 in any event constitute an indebtedness of such municipality
5 within the meaning of any constitutional or statutory pro-
6 vision or limitation, and it shall be plainly stated on the
7 face of each bond that the same has been issued under the
8 provisions of this article, and that it does not constitute an
9 indebtedness of such municipality within any constitutional
10 or statutory provision or limitation. Subject to the provisions
11 of subsection (b), section twelve of this article, the ordinance
12 authorizing the issuance of the bonds may contain such cove-
13 nants and restrictions upon the issuance of additional revenue
14 bonds thereafter as may be deemed necessary or advisable for

15 the assurance of payment of the bonds thereby authorized and
16 as may thereafter be issued.

§8-19-8. Lien of bondholders.

1 There shall be and there is hereby created and granted
2 a statutory mortgage lien upon the waterworks or electric
3 power system so acquired, constructed, established, equipped,
4 extended or improved from the proceeds of bonds hereby
5 authorized to be issued, which shall exist in favor of the holder
6 of said bonds and each of them, and to and in favor of the
7 holder of the coupons attached to said bonds, and such water-
8 works or electric power system shall remain subject to such
9 statutory mortgage lien until payment in full of the principal of
10 and interest upon said bonds.

11 Any municipality in acquiring an existing waterworks system
12 or in improving an existing waterworks or electric power
13 system may provide that payment therefor shall be made by
14 issuing revenue bonds and delivering the same at such prices as
15 may be agreed upon within the limitations prescribed in section
16 six hereof. Any revenue bonds so issued in payment for such
17 an existing waterworks or electric power system shall for all
18 purposes be regarded as partaking of the nature of and as being
19 secured by a purchase money mortgage upon the property so
20 acquired or improved; and the holders thereof shall have, in
21 addition to any other remedies and rights prescribed by this
22 article, such remedies and rights as may now or hereafter exist
23 in law in the case of purchase money mortgages.

§8-19-9. Covenants with bondholders.

1 Any ordinance authorizing the issuance of bonds, here-
2 under, or any trust indenture with any banking institution
3 or trust company within or without the state for the security
4 of said bonds, which any such municipality is hereby em-
5 powered and authorized to enter into and execute, may contain
6 covenants with the holders of such bonds as to:

7 (a) The purpose or purposes to which the proceeds of
8 sale of such bonds or the revenues derived from said water-
9 works or electric power system may be applied and the
10 securing, use and disposition thereof, including, if deemed

11 desirable, the appointment of a trustee or depository for
12 any of such funds;

13 (b) The pledging of all or any part of the revenues
14 derived from the ownership, control or operation of such
15 waterworks or electric power system, including any part
16 thereof heretofore or hereafter acquired, constructed, estab-
17 lished, extended or equipped or derived from any other
18 sources, to the payment of the principal of or interest there-
19 on of bonds issued hereunder and for such reserve or
20 other funds as may be deemed necessary or desirable;

21 (c) The fixing, establishing and collecting of such rates
22 or charges for the use of the services and facilities of the
23 waterworks or electric power system, including the parts
24 thereof heretofore or hereafter acquired, constructed, estab-
25 lished, extended or equipped and the revision of same from
26 time to time, as will always provide revenues at least suf-
27 ficient to provide for all expenses of repair, maintenance
28 and operation of such waterworks or electric power system,
29 the payment of the principal of and interest upon all bonds
30 or other obligations payable from the revenues of such
31 waterworks or electric power system, and all reserve and
32 other funds required by the terms of the ordinance authorizing
33 the issuance of such bonds;

34 (d) The transfer from the general funds of the munici-
35 pality to the account or accounts of the waterworks or
36 electric power system of an amount equal to the cost of
37 furnishing the municipality or any of its departments, boards
38 or agencies with the services and facilities of such water-
39 works or electric power system;

40 (e) Subject to the provisions of subsection (b), section
41 twelve of this article, limitations or restrictions upon the
42 issuance of additional bonds or other obligations payable
43 from the revenues of such waterworks or electric power
44 system, and the rank or priority, as to lien and source and
45 security for payment from the revenues of such waterworks
46 or electric power system, between bonds payable from such
47 revenues;

48 (f) The manner and terms upon which all bonds and other

49 obligations issued hereunder may be declared immediately
50 due and payable upon the happening of a default in the pay-
51 ment of the principal of or interest thereon, or in the
52 performance of any covenant or agreement with bondholders,
53 and the manner and terms upon which such defaults may be
54 declared cured and the acceleration of the maturity of such
55 bonds rescinded and repealed;

56 (g) Budgets for the annual repair, maintenance and opera-
57 tion of such waterworks or electric power system and restric-
58 tions and limitations upon expenditures for such purposes,
59 and the manner of adoption, modification, repeal or amend-
60 ment thereof, including the approval of such budgets by
61 consulting engineers designated by holders of bonds issued
62 hereunder;

63 (h) The amounts of insurance to be maintained upon such
64 waterworks or electric power system, or any part thereof,
65 and the use and disposition of the proceeds of any insur-
66 ance; and

67 (i) The keeping of books of account, relating to such
68 undertakings and the audit and inspection thereof, and the
69 furnishing to the holders of bonds issued hereunder or their
70 representatives, reports prepared, certified or approved by
71 accountants designated or approved by the holders of bonds
72 issued hereunder.

73 Any such ordinance or trust indenture may also contain
74 such other additional covenants as shall be deemed necessary
75 or desirable for the security of the holders of bonds issued
76 hereunder, notwithstanding that such other covenants are not
77 expressly enumerated above, it being the intention hereof to
78 grant to municipalities plenary power and authority to make
79 any and all covenants or agreements necessary in order to
80 secure greater marketability for bonds issued hereunder as
81 fully and to the same extent as such covenants or agreements
82 could be made by a private corporation rendering similar
83 services and facilities and to grant to municipalities full and
84 complete power and authority to enter into any contracts,
85 covenants or agreements with holders of bonds issued here-
86 under not inconsistent with the constitution of this state.

§8-19-10. Operating contract.

1 Any such municipality may enter into contracts or agree-
2 ments with any persons for (1) the repair, maintenance and
3 operation and management of the facilities and properties of
4 said waterworks or electric power system, or any part thereof,
5 or (2) the collection and disbursement of the income and
6 revenues therefor, or for both (1) and (2), for such period of
7 time and under such terms and conditions as shall be agreed
8 upon between such municipality and such persons. Any such
9 municipality shall have plenary power and authority to pro-
10 vide in the ordinance authorizing the issuance of bonds here-
11 under, or in any trust indenture securing such bonds, that
12 such contracts or agreements shall be valid and binding upon
13 the municipality as long as any of said bonds, or interest
14 thereon, is outstanding and unpaid.

§8-19-11. Rates or charges for water and electric power must be sufficient to pay bonds, etc.; disposition of surplus.

1 Rates or charges for water fixed precedent to the issuance
2 of bonds shall not be reduced until all of said bonds shall
3 have been fully paid, and may, whenever necessary, be in-
4 creased in amounts sufficient to provide for the payment of
5 the principal of and interest upon such bonds, and to pro-
6 vide proper funds for the depreciation account and repair,
7 maintenance and operation charges. If any surplus shall be
8 accumulated in the repair, maintenance and operation fund
9 which shall be in excess of the cost of repairing, maintaining
10 and operating the waterworks or electric power system dur-
11 ing the remainder of the fiscal year then current, and the
12 cost of repairing, maintaining and operating the said water-
13 works or electric power system during the fiscal year then
14 next ensuing, then any such excess may be transferred to
15 either the depreciation account or to the bond and interest
16 redemption account, and if any surplus shall be accumulated
17 in the depreciation account over and above that which the
18 municipality shall find may be necessary for the probable
19 replacements which may be needed during the then present
20 fiscal year, and the next ensuing fiscal year, such excess may
21 be transferred to the bond and interest redemption account,
22 and if any surplus shall exist in the bond and interest

23 redemption account the same shall be applied insofar as
24 possible in the purchase or retirement of outstanding revenue
25 bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

1 (a) Every municipality issuing bonds under the provisions
2 of this article shall thereafter, so long as any of such bonds
3 remain outstanding, repair, maintain and operate its water-
4 works or electric power system as hereinafter provided and
5 shall charge, collect and account for revenues therefrom as
6 will be sufficient to pay all repair, maintenance and operation
7 costs, provide a depreciation fund, retire the bonds and pay
8 the interest requirements of the bonds as the same become
9 due. The ordinance pursuant to which any such bonds are
10 issued shall pledge the revenues derived from the waterworks
11 or electric power system to the purposes aforesaid and shall
12 definitely fix and determine the amount of revenues which
13 shall be necessary and set apart in a special fund for the bond
14 requirements. The amounts as and when so set apart into
15 said special fund for the bond requirements shall be remitted
16 to the state sinking fund commission to be retained and paid
17 out by said commission consistent with the provisions of this
18 article and the ordinance pursuant to which such bonds have
19 been issued. The bonds hereby authorized shall be issued in
20 such amounts as may be determined necessary to provide
21 funds for the purpose for which they are authorized, and in
22 determining the amount of bonds to be issued it shall be
23 proper to include interest on the bonds for a period not beyond
24 six months from the estimated date of completion.

25 (b) If the proceeds of the bonds, because of error or other-
26 wise, shall be less than the cost of the property or undertaking
27 for which authorized, additional bonds may be issued to pro-
28 vide the amount of such deficit and such additional bonds shall
29 be deemed to be of the same issue and shall be entitled to
30 payment from the same fund without preference or priority
31 over the bonds first authorized and issued.

32 (c) If the proceeds of the bonds shall exceed the cost of
33 the property or undertaking, the surplus shall be converted

34 into the fund for the retirement of the bonds and payment of
35 the interest thereon.

§8-19-13. Discontinuance of water or electric power service for nonpayment of rates or charges.

1 Any such municipality shall also have plenary power and
2 authority, and may covenant with the holders of any bonds
3 issued hereunder, to shut off and discontinue the supplying
4 of the water or electric power service of said waterworks or
5 electric power system for the nonpayment of the rates or
6 charges for said water or electric power service.

§8-19-14. Bonds for additions, betterments and improvements.

1 Whenever any municipality shall now or hereafter own
2 and operate a waterworks or electric power system, whether
3 acquired, constructed, established, extended or equipped under
4 the provisions of this article or not, and shall desire to con-
5 struct additions, betterments or improvements thereto, it may
6 issue revenue bonds under the provisions of this article to
7 pay for the same, and the procedure therefor, including the
8 fixing of rates or charges and the computation of the amount
9 thereof, and the power and authority in connection there-
10 with, shall be the same as in this article provided for the
11 issuance of bonds for the acquisition, construction, establish-
12 ment, extension or equipment of a waterworks system in
13 a municipality which has not heretofore owned and operated
14 a waterworks system: *Provided*, That nothing in this article
15 shall be construed as authorizing any municipality to im-
16 pair or commit a breach of the obligation of any valid
17 lien or contract created or entered into by it, the inten-
18 tion being to authorize the pledging, setting aside and segre-
19 gation of such revenues for the construction of such addi-
20 tions, betterments or improvements only where and to the
21 extent consistent with outstanding obligations of such munici-
22 pality, and in accordance with the provisions of this article.

§8-19-15. System of accounts; audit.

1 Any municipality operating a waterworks or electric power
2 system under the provisions of this article shall set up and
3 maintain a proper system of accounts in accordance with

4 the requirements of the public service commission, showing
5 the amount of revenues received from such waterworks or
6 electric power system and the application of the same. At
7 least once each year such municipality shall cause such
8 accounts to be properly audited, and a report of such audit
9 shall be open to the public for inspection at all reasonable
10 times.

**§8-19-16. Protection and enforcement of rights of bondholders,
etc.; receivership.**

1 Any holder of any bonds issued under the provisions of
2 this article or of any coupons representing interest accrued
3 thereon may by civil action, mandamus or other proper
4 proceeding enforce the statutory mortgage lien created and
5 granted in section eight of this article, protect and enforce
6 any and all rights granted hereunder or under any such
7 ordinance or trust indenture, and may enforce and compel
8 performance of all duties required by the provisions of this
9 article or by any such ordinance or trust indenture to be per-
10 formed by the municipality, or by the governing body or
11 any officer, including the making and collecting of reasonable
12 and sufficient rates or charges for services rendered by the
13 waterworks or electric power system. If there be default in
14 the payment of the principal of or interest upon any of
15 such bonds, or of both principal and interest, any court
16 having jurisdiction shall appoint a receiver to administer
17 said waterworks or electric power system on behalf of the
18 municipality, and the bondholders or trustee, or both, with
19 power to charge and collect rates or charges sufficient to
20 provide for the retirement of the bonds and pay the interest
21 thereon, and for the payment of the repair, maintenance and
22 operation expenses, and such receiver shall apply the revenues
23 in conformity with the provisions of this article and the
24 ordinance pursuant to which such bonds have been issued
25 or any trust indenture, or both.

**PART V. GRANTS, LOANS AND ADVANCES;
CUMULATIVE AUTHORITY.**

§8-19-17. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

1 Any municipality is hereby empowered and authorized to
2 accept grants, and procure loans or temporary advances, for
3 the purpose of paying part or all of the cost of acquisition,
4 construction, establishment, extension or equipment of water-
5 works systems and the construction of additions, betterments
6 and improvements to existing waterworks systems or to exist-
7 ing electric power systems from the United States of America
8 or any federal or public agency or department of the United
9 States or any private agency, corporation or individual, which
10 loans or temporary advances may be repaid out of the proceeds
11 of bonds authorized to be issued under the provisions of this
12 article and to enter into the necessary contracts and agreements
13 to carry out the purposes hereof with the United States of
14 America or any federal or public agency or department of the
15 United States, or with any private agency, corporation or in-
16 dividual.

17 In no event shall any such loan or temporary advance be a
18 general obligation of the municipality and such loans or tem-
19 porary advances, including the interest thereon, shall be paid
20 solely from the proceeds of the bonds authorized to be issued
21 under the provisions of this article or the revenues of the
22 municipal waterworks or electric power system so recited
23 in each such contract and agreement.

§8-19-18. Additional and alternative method for constructing or improving and for financing waterworks or electric power system; cumulative authority.

1 This article shall, without reference to any other statute
2 or charter provision, be deemed full authority for the acqui-
3 sition, construction, establishment, extension, equipment, addi-
4 tions, betterment, improvement, repair, maintenance and opera-
5 tion of or to a waterworks system or for the construction of
6 any additions, betterments or improvements to an existing

7 electric power system as herein provided and for the issuance
8 and sale of the bonds by this article authorized, and shall be
9 construed as an additional and alternative method therefor and
10 for the financing thereof, and no petition, referendum or elec-
11 tion or other or further proceeding with respect to any such
12 undertaking or to the issuance or sale of bonds under the pro-
13 visions of this article and no publication of any resolution, or-
14 dinance, notice or proceeding relating to any such undertaking
15 or to the issuance or sale of such bonds shall be required, ex-
16 cept as prescribed by this article, any provisions of other
17 statutes of the state to the contrary notwithstanding: *Provided,*
18 That all functions, powers and duties of the state department of
19 health shall remain unaffected by this article.

20 This article shall be construed as cumulative authority for
21 any undertaking herein authorized, and shall not be construed
22 to repeal any existing laws with respect thereto.

PART VI. OPERATION BY BOARD; CONSTRUCTION.

§8-19-19. Alternative procedure for acquisition, construction or improvement of waterworks or electric power system.

1 As an alternative to the procedures hereinabove provided,
2 any municipality is hereby empowered and authorized to
3 acquire, construct, establish, extend, equip, repair, maintain
4 and operate a waterworks system or to construct, maintain and
5 operate additions, betterments and improvements to an existing
6 waterworks system or an existing electric power system,
7 whether acquired, constructed, established, extended or
8 equipped under the provisions of this article or not, and to col-
9 lect the revenues therefrom for the services rendered thereby,
10 through the supervision and control of a committee, by what-
11 ever name called, composed of all or a portion of the governing
12 body, or of a board or commission appointed by such govern-
13 ing body, as may be provided by the governing body, and if
14 such alternative is followed, said committee, board or commis-
15 sion shall have and be limited to all the powers, authority and
16 duties granted to and imposed upon a board as provided in
17 article sixteen of this chapter.

CHAPTER 73

(S. B. 321—By Mr. Brotherton, Mr. President)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting counties as well as municipalities to establish neighborhood rehabilitation programs.

Be it enacted by the Legislature of West Virginia:

That article twenty-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 20A. NEIGHBORHOOD REHABILITATION.

§8-20A-1. Legislative findings and purpose.

§8-20A-2. Definitions.

§8-20A-3. Neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

§8-20A-1. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that the
2 lack of safe, decent, sanitary and affordable dwellings
3 is one of the most serious problems facing this state and
4 that a major contributing factor to this problem is the
5 deterioration of the state's existing housing stock; that
6 these deteriorating dwellings exist in both the urban
7 and rural areas of the state; and that a disproportionate
8 number of homeowners residing in these deteriorating
9 dwellings are older, less affluent and otherwise less able
10 to afford the expense of the remodeling, repairing and
11 rehabilitating of their residences necessary to maintain
12 such residences in a sanitary, safe and decent condition;
13 that because of their lack of acceptable loan collateral,
14 the age of their residences and the location and age
15 of the neighborhoods in which their residences are located,
16 many of such homeowners have not been able to borrow
17 funds necessary to effect such remodeling, repair and
18 rehabilitation; and that some of such homeowners who

19 have been able to obtain funds for such purposes have
20 been able to do so only upon rates of interest and upon
21 other terms and conditions which are particularly onerous
22 to such homeowners.

23 (b) The Legislature further finds and declares that the
24 assistance authorized in this article will provide, and
25 will encourage private lenders to provide, to such home-
26 owners, more readily and at rates of interest and upon
27 other terms and conditions significantly more favorable
28 to such homeowners, the loans necessary to finance the
29 cost of such remodeling, repair and rehabilitation.

30 (c) The Legislature further finds and declares that
31 the powers granted to municipalities and counties in
32 this article will enable them to maximize the use of
33 federal programs for housing rehabilitation.

34 (d) The Legislature further finds and declares that
35 it is manifestly in the public interest to foster the pride,
36 self-respect and esteem incident to home ownership and
37 to encourage and assist in the maintenance of residences
38 in a safe, decent and sanitary condition; that without the
39 assistance authorized in this article, there will be con-
40 tinued deterioration of housing with the resultant prolif-
41 eration of slums, higher crime rates and general decline
42 in civic pride, public spirit and the quality of life, with
43 all of the public cost, direct and indirect, attendant there-
44 on; and that accordingly by providing such assistance, any
45 municipality or county will be acting in all respects for
46 the benefit of the people of the state of West Virginia
47 and shall thereby serve a public purpose in improving
48 and otherwise promoting their health, welfare and pros-
49 perity.

§8-20A-2. Definitions.

1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Eligible dwelling" means real estate upon which
4 there is located a structure designed primarily for resi-
5 dential housing and consisting of dwelling units for not
6 more than four families: *Provided*, That all occupancy

7 thereof shall be limited to persons and families who
8 would qualify as eligible residents.

9 (2) "Eligible resident" means a person or family re-
10 siding in an eligible dwelling owned by such person or
11 family situate within the boundaries of a municipality
12 or county, irrespective of race, creed, national origin
13 or sex, with respect to whom it is determined by the
14 governing body of such municipality or county that (a)
15 such person or family because of financial condition, age,
16 infirmity, family size or other reasons, is unable to obtain,
17 on suitable terms and condition, loans or other credit
18 necessary for the rehabilitation of such eligible dwelling,
19 and hence requires the assistance as provided in this
20 article, (b) such rehabilitation is necessary to place
21 such eligible dwelling in a safe, sanitary and decent
22 condition, and (c) the assistance as authorized in this
23 article shall make financing available to such person
24 or family, or enable such person or family to obtain
25 such financing on terms and conditions substantially more
26 favorable to such person or family than would otherwise
27 be available.

28 (3) "Rehabilitation" means a specific work of improve-
29 ment within a municipality or county undertaken pri-
30 marily to remodel, repair or rehabilitate an eligible
31 dwelling occupied by an eligible resident as his principal
32 residence.

§8-20A-3. Neighborhood rehabilitation fund.

1 (a) Any municipality or county shall have plenary
2 power and authority, by charter provision, ordinance or
3 resolution, to establish a special fund of moneys made
4 available by appropriation, grant, contribution, loan or
5 otherwise, to be known as the neighborhood rehabilita-
6 tion fund of such municipality or county, to be governed,
7 administered and accounted for by the governing body
8 of such municipality or county, as a special purpose
9 account, separate and distinct from any other moneys,
10 fund or funds owned by such municipality or county.

11 (b) The governing body of any municipality or county
12 may, from time to time, by resolution, establish criteria

13 which shall govern the determination of persons and
14 families who qualify as eligible residents.

15 (c) The purpose of such neighborhood rehabilitation
16 fund shall be to provide funds for the making of grants
17 and loans, or to guarantee the repayment of loans made
18 by private lenders, to eligible residents of such munici-
19 pality or county, the proceeds of which loans are to be
20 used exclusively for rehabilitation.

21 (d) Such loans shall be made or guaranteed and grants
22 made only upon determination by the governing body
23 of such municipality or county, or by a board or com-
24 mission appointed for such purpose by such governing
25 body, that the recipients are eligible residents, that the
26 proceeds of the loan or grant shall be used for rehabilita-
27 tion and that loans or grants to such eligible recipients for
28 rehabilitation are not otherwise available upon reasonably
29 equivalent terms and conditions.

30 (e) No loan shall be made or guaranteed by such
31 municipality or county except in accordance with a
32 written agreement between such municipality or county,
33 the eligible resident and in the case of a guaranteed loan
34 the lender making such loan, which agreement shall
35 provide, without limitation, that:

36 (1) The proceeds of such loan shall be used exclusively
37 for rehabilitation;

38 (2) The loan shall be in such principal amount, repay-
39 able in such number of consecutive and substantially
40 equal monthly installments at such annual rate of interest
41 and shall be secured in such manner as specified in such
42 agreement;

43 (3) In the case of a guaranteed loan, such municipality
44 or county shall be obligated to repay, from the neighbor-
45 hood rehabilitation fund established in accordance with
46 this article, any installment or installments of such loan
47 as shall be in default from time to time in accordance
48 with the provisions of such agreement;

49 (4) In the event an eligible resident defaults on such
50 loan made by such municipality or county, or in the

51 event such municipality or county incurs an obligation
52 on a guaranteed loan such municipality or county shall
53 be entitled, at its option, to realize on any and all security
54 for said loan: *Provided*, That the right of such municipal-
55 ity or county to realize on such security with respect
56 to a guaranteed loan shall be subordinate and secondary
57 to the right of the lender as to such security, to the
58 extent of the unpaid balance of such loan.

59 (f) Nothing in this article contained shall be so con-
60 strued as to authorize any municipality or county to
61 make any contract or incur any obligation or liability
62 of any kind or nature, except such as shall be discharged
63 or payable solely from the funds on deposit in such
64 neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

1 In addition to all other powers and rights of a munici-
2 pality or county, any municipality or county shall have
3 plenary power and authority, at the request of eligible
4 residents, to inspect the residences of such eligible resi-
5 dents, to make recommendations concerning rehabilita-
6 tion and to provide all manner of technical services and
7 assistance in the planning, processing and design of
8 needed rehabilitation.

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CHAPTER 74

(H. B. 1005—By Mr. Speaker, Mr. Kopp)

[Passed February 28, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen, twenty-two and twenty-six, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to municipal retirement benefits; policemen's pension and relief fund; firemen's pension and relief fund; levy to maintain funds; investment of funds by trustees; judgment in investments; actuarial studies; annual reports; and death benefits to members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.

§8-22-26. Death benefits.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

1 In every municipality in which there is a policemen's pen-
 2 sion and relief fund or a firemen's pension and relief fund, or
 3 both, the same shall be maintained as follows: The governing
 4 body of the municipality shall levy annually and in the manner
 5 provided by law for other municipal levies, and include with-
 6 in the maximum levy or levies permitted by law, and if
 7 necessary in excess of any charter provision, a tax at such
 8 rate as will, after crediting (a) the amount of the contributions
 9 received during such year from the members of the respective
 10 paid police department or paid fire department, and (b) in
 11 the case of the policemen's pension and relief fund, the arrest
 12 fee of one dollar as provided for in section twenty of this
 13 article, provide funds equal to the sum of (1) the full amount
 14 of estimated expenditures of the boards of trustees of the
 15 respective funds, and (2) an additional amount equal to ten
 16 percent of such estimated expenditures, said ten percent
 17 amount to be taken, accumulated and invested, if possible,
 18 as surplus reserve: *Provided*, That in no event shall such levy
 19 for each of the respective boards of trustees be less than one
 20 cent nor more than eight cents on each one hundred dollars
 21 of all real and personal property as listed for taxation in such
 22 municipality.

23 The levies authorized under the provisions of this section,
24 or any part of them, may by the governing body be laid in
25 addition to all other municipal levies, and to that extent, be-
26 yond the limit of levy imposed by the charter of such munic-
27 ipality; and such levies shall supersede and if necessary ex-
28 clude levies for other purposes if such priority or exclusion is
29 necessary under limitations upon taxes or tax levies imposed
30 by law.

31 Such public corporations are authorized to take by gift,
32 grant, devise or bequest, any money or real or personal prop-
33 erty, upon such terms as to the investment and expenditures
34 thereof as may be fixed by the grantor or determined by said
35 trustees.

36 In addition to all other sums provided for pensions in this
37 section, it shall be the duty of every municipality in which
38 any such fund or funds have been or shall be established to
39 assess and collect from each member of the paid police de-
40 partment or paid fire department or both each month, the
41 sum of six percent of the actual salary or compensation of
42 such member; and the amount so collected shall become a
43 regular part of the policemen's pension and relief fund, if
44 collected from a policeman, and of the firemen's pension and
45 relief fund, if collected from a fireman.

46 Any member of a paid police or fire department who is
47 removed or discharged or who before retirement on any re-
48 tirement pension or disability pension severs his connection
49 with said department, provided he has served two full years or
50 more, whether or not consecutive, shall, upon request, be
51 refunded all pension and relief fund deductions made from
52 his salary or compensation, but without interest. In the event
53 such refund is made and such member subsequently reenters
54 the department no credit shall be allowed him for any former
55 service, unless any such member of a paid police or fire de-
56 partment repays to the pension and relief fund all sums
57 refunded to him within one year from the date he reenters
58 the department with interest at the rate of six percent per
59 annum: *Provided*, That any member who, on or before June
60 three, one thousand nine hundred fifty-five, reentered the
61 paid police or fire department shall be allowed credit for any

62 former service in the same department reentered if he, within
63 one year from said June three, one thousand nine hundred
64 fifty-five, repaid all sums withdrawn or refunded to him with
65 interest at the rate of six percent per annum, but in no case
66 shall interest be charged for more than three years. Any
67 probationary member of a paid police or fire department who
68 is not given an absolute appointment at the end of his pro-
69 bationary period shall, upon request, be refunded all pension
70 and relief fund deductions made from his salary or compen-
71 sation, but without interest.

**§8-22-22. Investment of funds; exercise of judgment in making
investments; actuarial studies required; annual report.**

1 The board of trustees shall invest any moneys received by
2 it in the following classes of securities and accounts and not
3 otherwise, which securities and accounts mature on such dates
4 as will make available such amount of cash as is required:

5 (a) Obligations of the United States or any agency thereof,
6 which are guaranteed by the United States or for which the
7 full faith and credit of the United States is pledged for the
8 payment of principal and interest, or any obligation of an
9 agency of the United States designated in section nine, article
10 six, chapter twelve of this code.

11 (b) Certificates of deposit secured by (1) obligations as
12 listed in subdivision (a) of this section, (2) general obligation
13 or revenue bonds of the state of West Virginia, (3) general
14 obligation bonds of any other state, (4) general obligation
15 bonds of any county in this state or of any county board of
16 education in this state, or (5) general obligation bonds of any
17 municipality in this state.

18 (c) Interest bearing savings accounts or certificates of de-
19 posit in banking institutions, the accounts of which are insured
20 by the federal deposit insurance corporation, or interest bear-
21 ing savings accounts in federal savings and loan associations,
22 the accounts of which are insured by the federal savings and
23 loan insurance corporation, or interest bearing savings accounts
24 in building and loan associations, the accounts of which are
25 insured by the federal savings and loan insurance corporation:
26 *Provided, That an investment in any such savings account*

27 in excess of the amount thereof which would be insured by the
28 federal deposit insurance corporation or the federal savings
29 and loan insurance corporation, as the case may be, shall not
30 be made unless such banking institution, federal savings and
31 loan association or building and loan association provides ade-
32 quate bond or other adequate security for the amount of the
33 proposed municipal investment in excess of such insurance
34 coverage, the adequacy of any such bond or other security
35 to be determined by the treasurer of such municipality.

36 (d) Any security that is secured by a first lien deed of trust
37 or mortgage on real property situate within this state:
38 *Provided*, That the value of the securing of first lien deed
39 of trust or mortgage shall be at least twice the amount loaned
40 thereon, based on a sound appraisal by a competent appraiser
41 and duly certified by him or federally insured: *Provided*,
42 *however*, That the interest for such loan of money at a
43 rate expressed in terms of dollars upon one hundred dol-
44 lars for a year, shall be not less than the monthly index
45 of long-term government bonds yields for the second
46 preceding calendar month plus an additional one percent
47 a year rounded off to the nearest quarter of one percent
48 a year.

49 Any investment made under this article shall be made with
50 the exercise of that degree of judgment and care, under cir-
51 cumstances then prevailing, which men of experience, pru-
52 dence, discretion and intelligence exercise in the management
53 of their own affairs, not for speculation but for investment,
54 considering the probable safety of their capital as well as the
55 probable income to be derived.

56 The board of trustees shall cause an actuarial study of the
57 fund to be completed before the first day of July, one thousand
58 nine hundred seventy-nine, and each eight years thereafter:
59 *Provided*, That any board which has caused an actuarial
60 study of such fund to be completed within four years prior
61 to the effective date of this section shall be required to have its
62 next actuarial study completed before the first day of July,
63 one thousand nine hundred eighty-four. The actuarial study
64 shall be performed by an actuary who is a member of the
65 society of actuaries.

66 The board of trustees shall make a report to the governing
67 body of the municipality on the condition of its fund on the
68 thirty-first day of December of each year.

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department who has
3 been in continuous service for more than five years dies, from
4 any cause other than as specified in subsection (b) of this
5 section before retirement on a disability pension under the
6 provisions of section twenty-four of this article or a retirement
7 pension under the provisions of subsection (a) or both sub-
8 sections (a) and (b) of section twenty-five of this article,
9 leaving in either case surviving a dependent spouse, or any
10 dependent child or children under the age of eighteen years, or
11 dependent father or mother or both, or any dependent brothers
12 or sisters or both under the age of eighteen years; or

13 (2) Any former member of any such department who is on
14 a disability pension under the provisions of section twenty-
15 four of this article, or has attained the age of fifty years and is
16 receiving or is entitled to receive retirement pension benefits
17 under the provisions of subsection (a) or both subsections
18 (a) and (b) of section twenty-five of this article, shall die,
19 from any cause other than as specified in subsection (b) of
20 this section leaving in either case surviving a dependent spouse
21 to whom the marriage took place prior to the date of such
22 member's retirement on a disability pension or a retirement
23 pension, or any dependent child or children under the age
24 of eighteen years who were born prior to or within ten
25 months after the date of such member's retirement on a
26 disability pension or a retirement pension, or dependent
27 father or mother or both, or any dependent brothers or
28 sisters or both under the age of eighteen years; or

29 (3) Any former member of any such department who has
30 retired under the provisions of subsection (a) or both
31 subsections (a) and (b) of section twenty-five of this article,
32 shall die before attaining the age of fifty years, from any
33 cause other than as specified in subsection (b) of this section
34 leaving surviving a dependent spouse, or any dependent child

35 or children under the age of eighteen years, or dependent father
36 or mother or both, or any dependent brothers or sisters or both
37 under the age of eighteen years; then in any of the cases set
38 forth above in (1), (2) and (3), the board of trustees of such
39 pension and relief fund shall, immediately following the
40 death of such member, pay to or for each of such entitled
41 surviving dependents the following pension benefits, viz.: To
42 such dependent spouse, until death or remarriage, a sum per
43 month equal to thirty percent of such member's average
44 monthly salary or compensation received during the three
45 fiscal years, not necessarily consecutive, in which such mem-
46 ber received his highest salary or compensation while a
47 member of the department, hereinafter for convenience re-
48 ferred to in this section as "monthly average," or an amount
49 of one hundred dollars per month, whichever shall be greater;
50 to each such dependent child a sum per month equal to
51 ten percent of such monthly average, or the sum of thirty
52 dollars per month for each such child, whichever shall be
53 greater, until such child shall attain the age of eighteen years
54 or marry, whichever first occurs; to each such dependent
55 orphaned child a sum per month equal to fifteen percent of
56 such monthly average, or the sum of forty-five dollars per
57 month for each such child, whichever shall be greater, until
58 such child shall attain the age of eighteen years or marry,
59 whichever first occurs; to each such dependent father or
60 mother a sum per month for each equal to ten percent of
61 such monthly average, or the sum of thirty dollars per month
62 for each such father and mother, whichever shall be greater;
63 to each such dependent brother or sister the sum of five
64 dollars per month until such individual shall attain the age
65 of eighteen years or marry, whichever first occurs, but in
66 no event shall the aggregate amount paid to such brothers
67 and sisters exceed thirty dollars per month; but if at any
68 time, because of the number of dependents, all such dependents
69 cannot be paid in full as herein provided, then each dependent
70 shall receive his pro rata share of such payments: *Provided,*
71 That in no case shall the payments to the surviving spouse
72 and children be cut below sixty-five percent of the total
73 amount to be paid to all dependents.

74 (b) The dependent spouse, child or children, or dependent

75 father or mother, or dependent brothers or sisters, of any such
76 member who shall die by reason of service rendered in the
77 performance of such member's duties shall, regardless of the
78 length of such member's service and irrespective of whether
79 such member was or was not entitled to receive or was or was
80 not receiving a disability pension or temporary disability pay-
81 ments at the time of his death, receive the death benefits
82 provided for in subsection (a) of this section, and if such
83 member had less than three years' service at the time of his
84 death, the monthly average shall be computed on the basis
85 of the actual number of years of service.

86 (c) The provisions of this section shall not be construed
87 as creating or establishing any contractual or vested rights
88 in favor of any individual who may be or become qualified
89 as a beneficiary of the death benefits herein authorized to be
90 made, all the provisions hereof and benefits provided for
91 hereunder being expressly subject to such subsequent legisla-
92 tive enactments as may provide for any change, modification or
93 elimination of the beneficiaries or benefits specified herein.

CHAPTER 75

(H. B. 1252—By Mr. Ballouz and Mr. Goodwin)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the director of natural resources; and providing the director with the power to regulate and set the digging season of native, wild ginseng.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.**§20-1-7. Additional powers, duties and services of director.**

1 In addition to all other powers, duties and responsibilities
2 granted and assigned to the director in this chapter and
3 elsewhere by law, the director is hereby authorized and
4 empowered to:

5 (1) With the advice of the commission, prepare and
6 administer, through the various divisions created by this
7 chapter, a long-range comprehensive program for the con-
8 servation of the natural resources of the state which best
9 effectuates the purpose of this chapter and which makes
10 adequate provisions for the natural resources laws of the
11 state;

12 (2) Sign and execute in the name of the state by the
13 "department of natural resources" any contract or agreement
14 with the federal government or its departments or agencies,
15 subdivisions of the state, corporations, associations, partner-
16 ships or individuals;

17 (3) Conduct research in improved conservation methods
18 and disseminate information matters to the residents of the
19 state;

20 (4) Conduct a continuous study and investigation of the
21 habits of wildlife, and for purposes of control and protection,
22 to classify by regulation the various species into such cate-
23 gories as may be established as necessary;

24 (5) Prescribe the locality in which the manner and
25 method by which the various species of wildlife may be taken,
26 or chased, unless otherwise specified by this chapter;

27 (6) Hold at least six meetings each year at such time
28 and at such points within the state, as in the discretion of
29 the natural resources commission may appear to be necessary
30 and proper for the purpose of giving interested persons in
31 the various sections of the state an opportunity to be heard
32 concerning open season for their respective areas, and report
33 the results of the meetings to the natural resources com-
34 mission before such season and bag limits are fixed by
35 it;

36 (7) Suspend open hunting season upon any or all wild-
37 life in any or all counties of the state with the prior ap-
38 proval of the governor in case of an emergency such as a
39 drought, forest fire hazard or epizootic disease among
40 wildlife. The suspension shall continue during the existence
41 of the emergency and until rescinded by the director. Sus-
42 pension, or reopening after such suspension, of open seasons
43 may be made upon twenty-four hours' notice by delivery
44 of a copy of the order of suspension or reopening to the
45 wire press agencies at the state capitol;

46 (8) Supervise the fiscal affairs and responsibilities of
47 the department;

48 (9) Designate such localities as he shall determine to
49 be necessary and desirable for the perpetuation of any species
50 of wildlife;

51 (10) Enter private lands to make surveys or inspections
52 for conservation purposes, to investigate for violations of
53 provisions of this chapter, to serve and execute warrants
54 and processes, to make arrests and to otherwise effectively
55 enforce the provisions of this chapter;

56 (11) Acquire for the state in the name of the "depart-
57 ment of natural resources" by purchase, condemnation, lease
58 or agreement, or accept or reject for the state, in the
59 name of the department of natural resources, gifts, dona-
60 tions, contributions, bequests or devises of money, security
61 or property, both real and personal, and any interest in
62 such property, including lands and waters, which he deems
63 suitable for the following purposes:

64 (a) For state forests for the purpose of growing timber,
65 demonstrating forestry, furnishing or protecting watersheds
66 or providing public recreation;

67 (b) For state parks or recreation areas for the purpose
68 of preserving scenic, aesthetic, scientific, cultural, archaeologi-
69 cal or historical values or natural wonders, or providing public
70 recreation;

71 (c) For public hunting, trapping or fishing grounds or
72 waters for the purpose of providing areas in which the public

73 may hunt, trap or fish, as permitted by the provisions of
74 this chapter, and the rules and regulations issued here-
75 under;

76 (d) For fish hatcheries, game farms, wildlife research
77 areas and feeding stations;

78 (e) For the extension and consolidation of lands or
79 waters suitable for the above purposes by exchange of other
80 lands or waters under his supervision;

81 (f) For such other purposes as may be necessary to
82 carry out the provisions of this chapter;

83 (12) Capture, propagate, transport, sell or exchange any
84 species of wildlife as may be necessary to carry out the pro-
85 visions of this chapter;

86 (13) Sell, with the approval in writing of the governor,
87 timber for not less than the value thereof, as appraised by
88 a qualified appraiser appointed by the director, from all
89 lands under the jurisdiction and control of the director,
90 except those lands that are designated as state parks and those
91 in the Kanawha state forest. The appraisal shall be made with-
92 in a reasonable time prior to any sale, reduced to writing, filed
93 in the office of the director and shall be available for public in-
94 spection. When the appraised value of the timber to be sold is
95 more than five hundred dollars, the director, before making sale
96 thereof, shall receive sealed bids therefor, after notice by pub-
97 lication as a Class II legal advertisement in compliance with
98 the provisions of article three, chapter fifty-nine of this
99 code, and the publication area for such publication shall
100 be each county in which the timber is located. The timber
101 so advertised shall be sold at not less than the appraised
102 value to the highest responsible bidder, who shall give
103 bond for the proper performance of the sales contract as
104 the director shall designate; but the director shall have
105 the right to reject any and all bids and to readvertise for
106 bids. If the foregoing provisions of this section have been
107 complied with, and no bid equal to or in excess of the
108 appraised value of the timber is received, the director may,
109 at any time, during a period of six months after the opening
110 of the bids, sell the timber in such manner as he deems

111 appropriate, but the sale price shall not be less than the
112 appraised value of the timber advertised. No contract for
113 sale of timber made pursuant to this section shall extend for a
114 period of more than ten years. And all contracts heretofore en-
115 tered into by the state for the sale of timber shall not be vali-
116 dated by this section if the same be otherwise invalid. The pro-
117 ceeds arising from the sale of the timber so sold, shall be paid
118 to the treasurer of the state of West Virginia, and shall be cred-
119 ited to the department and used exclusively for the purposes
120 of this chapter: *Provided*, That nothing contained herein shall
121 prohibit the sale of timber which otherwise would be removed
122 from rights-of-way necessary for and strictly incidental to the
123 extraction of minerals;

124 (14) Sell or lease, with the approval in writing of the gover-
125 nor, coal, oil, gas, sand, gravel and any other minerals that may
126 be found in the lands under the jurisdiction and control of the
127 director, except those lands that are designated as state parks.
128 The director, before making sale or lease thereof, shall receive
129 sealed bids therefor, after notice by publication as a Class II
130 legal advertisement in compliance with the provisions of article
131 three, chapter fifty-nine of this code, and the publication area
132 for such publication shall be each county in which such lands
133 are located. The minerals so advertised shall be sold or leased
134 to the highest responsible bidder, who shall give bond for the
135 proper performance of the sales contract or lease as the director
136 shall designate; but the director shall have the right to reject
137 any and all bids and to readvertise the bids. The proceeds aris-
138 ing from any such sale or lease shall be paid to the treasurer of
139 the state of West Virginia and shall be credited to the depart-
140 ment and used exclusively for the purposes of this chapter;

141 (15) Exercise the powers granted by this chapter for
142 the protection of forests, and regulate fires and smoking in
143 the woods or in their proximity at such times and in such
144 localities as may be necessary to reduce the danger of
145 forest fires;

146 (16) Cooperate with departments and agencies of state,
147 local and federal governments in the conservation of natural
148 resources and the beautification of the state;

149 (17) Report to the governor each year all information

150 relative to the operation and functions of his department
151 and he shall make such other reports and recommendations as
152 may be required by the governor, including an annual financial
153 report covering all receipts and disbursements of the de-
154 partment of each fiscal year, and he shall deliver such
155 report to the governor on or before the first day of Decem-
156 ber next after the end of the fiscal year so covered. A
157 copy of such report shall be delivered to each house of
158 the Legislature when convened in January next following;

159 (18) Keep a complete and accurate record of all pro-
160 ceedings, record and file all bonds and contracts taken or
161 entered into, and assume responsibility for the custody and
162 preservation of all papers and documents pertaining to his
163 office, except as otherwise provided by law;

164 (19) Offer and pay, in his discretion, rewards for in-
165 formation respecting the violation, or for the apprehension
166 and conviction of any violators, of any of the provisions of
167 this chapter;

168 (20) Require such reports as he may deem to be neces-
169 sary from any person issued a license or permit under the
170 provisions of this chapter, but no person shall be required
171 to disclose secret processes or confidential data of competitive
172 significance;

173 (21) Purchase as provided by law all equipment neces-
174 sary for the conduct of his department;

175 (22) Conduct and encourage research designed to further
176 new and more extensive uses of the natural resources of this
177 state and to publicize the findings of such research;

178 (23) Encourage and cooperate with other public and
179 private organizations or groups in their efforts to publicize
180 the attractions of the state;

181 (24) Accept and expend, without the necessity of ap-
182 propriation by the Legislature, any gift or grant of money
183 made to the department for any and all purposes specified in
184 this chapter, and he shall account for and report on all
185 such receipts and expenditures to the governor;

186 (25) Cooperate with the state historian and other ap-
187 propriate state agencies in conducting research with reference
188 to the establishment of state parks and monuments of
189 historic, scenic and recreational value, and to take such
190 steps as may be necessary in establishing such monuments or
191 parts as he deems advisable;

192 (26) Maintain in his office at all times, properly in-
193 dexed by subject matter, and also, in chronological sequence,
194 all rules and regulations made or issued under the authority
195 of this chapter. Such records shall be available for public
196 inspection on all business days during the business hours
197 of working days;

198 (27) Delegate the powers and duties of his office, except
199 the power to execute contracts, to appointees and employees
200 of the department, who shall act under the direction and
201 supervision of the director and for whose acts he shall be
202 responsible;

203 (28) Conduct schools, institutions and other educational
204 programs, apart from or in cooperation with other govern-
205 mental agencies, for instruction and training in all phases of
206 the natural resources programs of the state;

207 (29) Authorize the payment of all or any part of the
208 reasonable expenses incurred by an employee of the de-
209 partment in moving his household furniture and effects as
210 a result of a reassignment of the employee: *Provided,*
211 That no part of the moving expenses of any one such em-
212 ployee shall be paid more frequently than once in twelve
213 months;

214 (30) Promulgate rules and regulations, in accordance with
215 the provisions of chapter twenty-nine-a of this code, to
216 implement and make effective the powers and duties vested
217 in him by the provisions of this chapter and take such other
218 steps as may be necessary in his discretion for the proper
219 and effective enforcement of the provisions of this chapter:
220 *Provided,* That all rules and regulations relating to articles
221 five and five-a of this chapter shall be promulgated by the
222 water resources board; and

223 (31) Regulate and set the digging season of native, wild
224 ginseng: *Provided*, That the digging season for wild, native
225 ginseng be set between the first day of December and the
226 fifteenth day of November of the following year.

CHAPTER 76

(H. B. 1651—By Mr. Brenda and Mr. Goodwin)

[Passed March 11, 1978; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the sale of pelts of game or fur-bearing animals taken during the legal season.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate private
2 game preserves for the purpose of propagating game for com-
3 mercial purposes, and those legally licensed to propagate or
4 sell fish, amphibians and other forms of aquatic life, shall
5 purchase or offer to purchase, sell or offer to sell, expose for
6 sale, or have in his possession for the purpose of sale any
7 wildlife, or part thereof, which has been designated as game
8 animals, fur-bearing animals, game birds, game fish or am-
9 phibians, or any of the song or insectivorous birds of the
10 state, or any other species of wildlife which the director may
11 designate: *Provided, however*, That pelts of game or fur-
12 bearing animals taken during the legal season may be sold:

13 *Provided further*, That hide, head, antlers and feet of a legally
14 killed deer and the hide, head, skull and feet of a legally killed
15 black bear may be sold.

16 No person, including a common carrier, shall transport,
17 carry or convey, or receive for such purposes any wildlife, the
18 sale of which is prohibited, if such person knows or has reason
19 to believe that such wildlife has been or is to be sold in
20 violation of this section.

21 The selling or exposing for sale, having in possession for
22 sale, transporting or carrying in violation of this section shall
23 each constitute a separate misdemeanor offense. Notwith-
24 standing the provisions of this or any other section of this
25 chapter, any game birds or game bird meats sold by licensed
26 retailers may be served at any hotel, restaurant or other
27 licensed eating place in this state.

CHAPTER 77

(S. B. 225—By Mr. Gainer)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the reporting of deer and wild turkey kills within twenty-four hours of when kill is made; and removing the provision authorizing the state to seize untagged deer or wild turkey.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, 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.

§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

1 Each person killing a deer or wild turkey found in a
2 wild state shall immediately after removing the entralls,

3 but in any event within one hour and before transporting
4 or removing the carcass in any manner from where it
5 was killed, complete and attach thereto the game tag
6 supplied with his or her hunting license. The game tag
7 shall remain on the carcass until it is dressed for con-
8 sumption.

9 If such wild turkey or deer has been lawfully killed
10 by a person not required to secure a license, or by a
11 person who has previously killed another species of
12 game bird or game animal for which a game tag is re-
13 quired, or by a person who has lost the tag supplied with
14 his or her license, such person shall make and attach a
15 tag to the carcass within the time specified after such
16 killing. The tag shall bear in plain English the name
17 and address of the hunter, and the date of killing, or, if
18 holding a license, the license number and the date and
19 county where the game was killed.

20 The carcass of such wild turkey or deer shall be de-
21 livered to a conservation officer or an official checking
22 station for checking and retagging before it is either
23 skinned or transported beyond the boundaries of the
24 county adjacent to that in which the kill was made.

25 Every failure to have said tag or tags attached, or
26 removing or transporting such animal in any manner, or
27 failure to deliver the carcass to a conservation officer or
28 other officer specified in this section or an official checking
29 station for checking, as herein provided, shall subject
30 the person so neglecting to the penalties provided in this
31 article.

CHAPTER 78

(S. B. 273—By Mr. Benson)

[Passed March 10, 1978; in effect July 1, 1978. 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 thirty-six-a, relating to wildlife resources; specifying the offense of hunting or fishing after license has been revoked; and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-36a. Hunting or fishing when license revoked; penalty.

1 Any person whose license to hunt or fish has been re-
2 voked, who hunts or fishes during the period of revoca-
3 tion, shall be guilty of a misdemeanor, and, upon convic-
4 tion thereof, shall for each offense be fined not less than
5 one hundred dollars nor more than five hundred dollars,
6 or be imprisoned in the county jail for not less than ten
7 days nor more than one hundred days, or both fined and
8 imprisoned.

CHAPTER 79

(S. B. 325—By Mr. Davis)

[Passed March 4, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a person convicted of littering with the choice of picking up litter for a total of sixteen hours in an area to be determined by the judge as an alternate penalty to fine or imprisonment; increasing the minimum fine for littering from twenty dollars to one hundred dollars, and decreasing the maximum jail sentence from six months to thirty days.

Be it enacted by the Legislature of West Virginia:

That section eleven, article four, 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 4. PARKS AND RECREATION.

§20-4-11. Highway beautification; unlawful disposal of litter, etc.; notice of section violations; evidence; enforcement; penalties; removal of litter.

1 The director of the department of natural resources
2 in cooperation with the commissioner of highways, the
3 department of public safety, the United States forestry
4 service, and other local, state and federal law-enforcement
5 agencies, shall be responsible for the administration and
6 enforcement of all laws and regulations relating to the
7 maintenance of cleanliness and improvement of appear-
8 ances on and along highways, roads, streets, alleys and
9 other public areas and ways of the state and shall make
10 recommendations to the director from time to time con-
11 cerning means and methods of accomplishing state high-
12 way beautification consistent with the provisions of this
13 chapter.

14 It shall be unlawful to place, deposit, dump or throw, or
15 cause to be placed, deposited, dumped or thrown, any
16 litter, garbage, refuse, trash, can, bottle, paper, ashes,
17 cigarette or cigar butt, carcass of any dead animal or any
18 part thereof, offal or any other offensive or unsightly
19 matter in or upon any public or private highway, road,
20 street or alley, or upon the surface of any land within one
21 hundred yards thereof without the consent of the owner,
22 or in or upon any private property into or upon which the
23 public is admitted by easement or license, or upon any
24 private property without the consent of the owner, or
25 in or upon any public park or other public property other
26 than in such place as may be set aside for such purpose
27 by the governing body having charge thereof.

28 If any such materials be thrown, cast, dumped or dis-
29 charged from a motor vehicle in violation of the provisions
30 hereof, such action shall be deemed prima facie evidence

31 that the owner and driver of such motor vehicle intended
32 to violate the provisions of this section.

33 The commissioner of motor vehicles, upon registering
34 a motor vehicle or issuing an operator's or chauffeur's
35 license, shall issue to the owner or licensee, as the case
36 may be, a copy of this section.

37 The commissioner of highways shall cause appropriate
38 signs to be placed at the state boundary on each primary
39 and secondary road, informing those entering the state
40 of the maximum penalty herein provided for disposing
41 of litter in, upon and near highways and roads in violation
42 of this section.

43 No portion of this section shall be construed to restrict a
44 private owner in the use of his own private property
45 or to prohibit the disposal of materials designated in this
46 section in any manner authorized by law.

47 Any person violating any provision of this section
48 shall be guilty of a misdemeanor, and, upon conviction
49 thereof, shall be fined not less than one hundred nor
50 more than five hundred dollars or imprisoned in the
51 county jail not more than thirty days, or both fined and
52 imprisoned: *Provided*, That at the election of the person
53 charged with violating any provision of this section,
54 execution of any such sentence shall be suspended upon
55 the condition that such person for a total of sixteen hours
56 pick up and remove from any area of any public highway,
57 road, street or alley, land or property, or public park
58 or other public property, the area to be specified by the
59 court, any and all litter, garbage, refuse, trash, cans, bot-
60 tles, papers, ashes, cigarette or cigar butts, carcass of
61 any dead animal or any part thereof, offal or any other
62 offensive or unsightly matter placed, deposited, dumped
63 or thrown thereon, contrary to the provisions of this sec-
64 tion, by anyone prior to the date of such conviction. If
65 execution of any such sentence is so suspended and the
66 person convicted satisfies the conditions upon which
67 execution was suspended, he shall be discharged with
68 like effect as if the fine had been fully paid and the
69 sentence had been fully executed, and if he does not

70 satisfy such condition, then such sentence shall be
71 executed.

72 Any law-enforcement officer who shall observe a per-
73 son violating the provisions of this section shall have a
74 mandatory duty to make an arrest or otherwise prosecute
75 the violator to the limits provided herein.

CHAPTER 80

(S. B. 517—By Mr. Brotherton, Mr. President, and Mr. Gainer)

[Passed March 12, 1978; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, three-a, five, six, seven, eight, ten, twelve, fifteen, sixteen, seventeen and nineteen, all of said article, all relating to the participation by the state in the "National Pollutant Discharge Elimination System", pursuant to the "Federal Water Pollution Control Act" as amended; providing a statement of the public policy of the state with respect to the control of water pollution; defining certain terms; delegating to the state water resources board certain powers and duties; standards of water quality and effluent limitations; specifying activities for which permits are required; providing for filing fees; providing for permit procedures; providing for orders to compel compliance with permits; providing for a duty to proceed with remedial action promptly upon receipt of a permit; authorizing the chief to employ legal counsel with the written approval of the attorney general; providing civil offenses and penalties for certain violations of the law relating to the control of water pollution; and providing criminal offenses and penalties for certain violations of the law relating to the control of water pollution.

Be it enacted by the Legislature of West Virginia:

That section thirteen, article five-a, chapter twenty of the

code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, three-a, five, six, seven, eight, ten, twelve, fifteen, sixteen, seventeen and nineteen of said article be amended and re-enacted, all to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

- §20-5A-1. Declaration of policy.
- §20-5A-2. Definitions.
- §20-5A-3. General powers and duties of chief and board with respect to pollution.
- §20-5A-3a. Standards of water quality and effluent limitations.
- §20-5A-5. Prohibitions; permits required.
- §20-5A-6. Form of application for permit; information required; fees.
- §20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.
- §20-5A-8. Inspections; orders to compel compliance with permits; service of orders.
- §20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.
- §20-5A-12. Duty to proceed with remedial action promptly upon receipt of permit; progress reports required; finances and funds.
- §20-5A-15. Appeal to water resources board.
- §20-5A-16. Judicial review.
- §20-5A-17. Civil penalties and injunctive relief.
- §20-5A-19. Violations; criminal penalties.

§20-5A-1. Declaration of policy.

1 It is declared to be the public policy of the state of
 2 West Virginia to maintain reasonable standards of purity
 3 and quality of the water of the state consistent with (1)
 4 public health and public enjoyment thereof; (2) the
 5 propagation and protection of animal, bird, fish, aquatic
 6 and plant life; and (3) the expansion of employment
 7 opportunities and the provision of a permanent founda-
 8 tion for healthy industrial development.

§20-5A-2. Definitions.

1 Unless the context in which used clearly requires a
 2 different meaning, as used in this article:
 3 (a) "Director" shall mean the director of the depart-
 4 ment of natural resources;
 5 (b) "Board" shall mean the state water resources
 6 board;

7 (c) "Chief" shall mean the chief of the division of
8 water resources of the department of natural resources;

9 (d) "Person," "persons" or "applicant" shall mean any
10 industrial user, public or private corporation, institution,
11 association, firm or company organized or existing under
12 the laws of this or any other state or country; state of
13 West Virginia; governmental agency, including federal
14 facilities; political subdivision; county commission;
15 municipal corporation; industry; sanitary district; public
16 service district; drainage district; soil conservation dis-
17 trict; watershed improvement district; partnership; trust;
18 estate; person or individual; group of persons or individ-
19 uals acting individually or as a group; or any legal
20 entity whatever;

21 (e) "Water resources," "water" or "waters" shall mean
22 any and all water on or beneath the surface of the ground,
23 whether percolating, standing, diffused or flowing, wholly
24 or partially within this state, or bordering this state and
25 within its jurisdiction, and shall include, without limit-
26 ing the generality of the foregoing, natural or artificial
27 lakes, rivers, streams, creeks, branches, brooks, ponds
28 (except farm ponds, industrial settling basins and ponds
29 and water treatment facilities), impounding reservoirs,
30 springs, wells, watercourses and wetlands;

31 (f) "Pollution" shall mean the man-made or man-
32 induced alteration of the chemical, physical, biological
33 and radiological integrity of the waters of the state;

34 (g) "Sewage" shall mean water-carried human or
35 animal wastes from residences, buildings, industrial
36 establishments or other places, together with such ground
37 water infiltration and surface waters as may be present;

38 (h) "Industrial wastes" shall mean any liquid, gaseous,
39 solid or other waste substance, or a combination thereof,
40 resulting from or incidental to any process of industry,
41 manufacturing, trade or business, or from or incidental
42 to the development, processing or recovery of any natural
43 resources; and the admixture with such industrial wastes
44 of sewage or other wastes, as hereinafter defined, shall

45 also be considered "industrial wastes" within the mean-
46 ing of this article;

47 (i) "Industrial user" shall mean those industries identi-
48 fied in the standard industrial classification manual,
49 United States Bureau of the Budget, 1967, as amended and
50 supplemented, under the category "division d--manu-
51 facturing" and other classes of significant waste producers
52 identified under regulations issued by the board or the
53 administrator of the United States environmental protec-
54 tion agency;

55 (j) "Other wastes" shall mean garbage, refuse, decayed
56 wood, sawdust, shavings, bark and other wood debris
57 and residues, sand, lime, cinders, ashes, offal, night soil,
58 silt, oil, tar, dyestuffs, acids, chemicals, heat, or all
59 other materials and substances not sewage or industrial
60 wastes which may cause or might reasonably be ex-
61 pected to cause or to contribute to the pollution of any
62 of the waters of the state;

63 (k) "Establishment" shall mean an industrial estab-
64 lishment, mill, factory, tannery, paper or pulp mill, mine,
65 colliery, breaker or mineral processing operation, quarry,
66 refinery, well, and each and every industry or plant or
67 works in the operation or process of which industrial
68 wastes, sewage or other wastes are produced;

69 (l) "Sewer system" shall mean pipelines or conduits,
70 pumping stations, force mains and all other construc-
71 tions, facilities, devices and appliances appurtenant there-
72 to, used for collecting or conducting sewage, industrial
73 wastes or other wastes to a point of disposal or treat-
74 ment;

75 (m) "Treatment works" shall mean any plant, facility,
76 means, system, disposal field, lagoon, pumping station,
77 constructed drainage ditch or surface water intercepting
78 ditch, diversion ditch above or below the surface of the
79 ground, settling tank or pond, earthen pit, incinerator,
80 area devoted to sanitary landfills, or other works not
81 specifically mentioned herein, installed for the purpose
82 of treating, neutralizing, stabilizing, holding or disposing
83 of sewage, industrial wastes or other wastes or for the

84 purpose of regulating or controlling the quality and rate
85 of flow thereof;

86 (n) "Publicly owned treatment works" shall mean any
87 treatment works owned by the state or any political
88 subdivision thereof, any municipality or any other public
89 entity, for the treatment of pollutants;

90 (o) "Disposal system" shall mean a system for treat-
91 ing or disposing of sewage, industrial wastes, or other
92 wastes, or the effluent therefrom, either by surface or
93 underground methods, and shall be construed to include
94 sewer systems, the use of subterranean spaces, treatment
95 works, disposal wells and other systems;

96 (p) "Outlet" shall mean the terminus of a sewer
97 system or the point of emergence of any water-carried
98 sewage, industrial wastes, or other wastes, or the effluent
99 therefrom, into any of the waters of this state, and shall
100 include a point source;

101 (q) "Point source" shall mean any discernible, con-
102 fined and discrete conveyance, including, but not limited
103 to, any pipe, ditch, channel, tunnel, conduit, well, dis-
104 crete fissure, container, rolling stock, or vessel or other
105 floating craft, from which pollutants are or may be dis-
106 charged;

107 (r) "Activity" or "activities" shall mean any activity
108 or activities for which a permit is required by the pro-
109 visions of section five of this article;

110 (s) "Disposal well" shall mean any well drilled or
111 used for the injection or disposal of treated or untreated
112 sewage, industrial wastes or other wastes into under-
113 ground strata;

114 (t) "Effluent limitation" shall mean any restriction
115 established on quantities, rates and concentrations of
116 chemical, physical, biological and other constituents which
117 are discharged into the waters of this state;

118 (u) "Code" shall mean the code of West Virginia, one
119 thousand nine hundred thirty-one, as amended;

120 (v) "Department" shall mean the department of
121 natural resources;

122 (w) "Well" shall mean any shaft or hole sunk, drilled,
123 bored or dug into the earth or into underground strata
124 for the extraction or injection or placement of any liquid
125 or gas, or any shaft or hole sunk or used in conjunction
126 with such extraction or injection or placement. The term
127 "well" shall not have included within its meaning any
128 shaft or hole sunk, drilled, bored or dug into the earth
129 for the sole purpose of core drilling or pumping or
130 extracting therefrom potable, fresh or usable water for
131 household, domestic, industrial, agricultural or public
132 use; and

133 (x) "Pollutant" shall mean industrial wastes, sewage
134 or other wastes as defined in this section.

§20-5A-3. General powers and duties of chief and board with respect to pollution.

1 (a) In addition to all other powers and duties of
2 the chief of the department's division of water resources,
3 as prescribed in this article or elsewhere by law, the
4 chief, under the supervision of the director, shall have
5 and may exercise the following powers and authority
6 and shall perform the following duties:

7 (1) To perform any and all acts necessary to carry
8 out the purposes and requirements of this article and
9 of the "Federal Water Pollution Control Act," as
10 amended, relating to this state's participation in the
11 "National Pollutant Discharge Elimination System" es-
12 tablished under that act;

13 (2) To encourage voluntary cooperation by all per-
14 sons in controlling and reducing the pollution of the
15 waters of this state, and to advise, consult and cooperate
16 with all persons, all agencies of this state, the federal
17 government or other states, and with interstate agencies
18 in the furtherance of the purposes of this article, and
19 to this end and for the purpose of studies, scientific or
20 other investigations, research, experiments and demon-
21 strations pertaining thereto, the department may re-

22 ceive moneys from such agencies, officers and persons
23 on behalf of the state. The department shall pay all
24 moneys so received into a special fund hereby created
25 in the state treasury, which fund shall be expended under
26 the direction of the chief solely for the purpose or pur-
27 poses for which the grant, gift or contribution shall have
28 been made;

29 (3) To encourage the formulation and execution of
30 plans by cooperative groups or associations of municipal
31 corporations, industries, industrial users, and other users
32 of waters of the state, who, jointly or severally, are or
33 may be the source of pollution of such waters, for the
34 control and reduction of pollution;

35 (4) To encourage, participate in, or conduct or cause
36 to be conducted studies, scientific or other investiga-
37 tions, research, experiments and demonstrations re-
38 lating to water pollution, and the causes, control
39 and reduction thereof, and to collect data with respect
40 thereto, all as may be deemed advisable and necessary
41 to carry out the purposes of this article;

42 (5) To study and investigate all problems concerning
43 water flow, water pollution and the control and
44 reduction of pollution of the waters of the state,
45 and to make reports and recommendations with respect
46 thereto;

47 (6) To collect and disseminate information relating
48 to water pollution and the control and reduction thereof;

49 (7) To develop a public education and promotion
50 program to aid and assist in publicizing the need of and
51 securing support for pollution control and abatement;

52 (8) To sample ground and surface water with suffi-
53 cient frequency to ascertain the standards of purity or
54 quality from time to time of the waters of the state;

55 (9) To develop programs for the control and reduc-
56 tion of the pollution of the waters of the state;

57 (10) To exercise general supervision over the admin-
58 istration and enforcement of the provisions of this ar-

59 ticle, and all rules, regulations, permits and orders is-
60 sued pursuant to the provisions of this article;

61 (11) In cooperation with the college of engineering
62 at West Virginia University and the schools and depart-
63 ments of engineering at other institutions of higher edu-
64 cation operated by this state, to conduct studies, scien-
65 tific or other investigations, research, experiments and
66 demonstrations in an effort to discover economical and
67 practical methods for the elimination, disposal, control
68 and treatment of sewage, industrial wastes, and other
69 wastes, and the control and reduction of water pollution,
70 and to this end, the chief may cooperate with any public
71 or private agency and receive therefrom, on behalf of
72 the state, and for deposit in the state treasury, any
73 moneys which such agency may contribute as its part
74 of the expenses thereof, and all gifts, donations or con-
75 tributions received as aforesaid shall be expended by
76 the chief according to the requirements or directions
77 of the donor or contributor without the necessity of an
78 appropriation therefor, except that an accounting thereof
79 shall be made in the fiscal reports of the depart-
80 ment;

81 (12) To require the prior submission of plans, speci-
82 fications, and other data relative to, and to inspect the
83 construction and operation of, any activity or activities
84 in connection with the issuance and revocation of
85 such permits as are required by this article or the
86 rules and regulations promulgated hereunder; and

87 (13) To require any and all persons directly or in-
88 directly discharging, depositing or disposing of treated
89 or untreated sewage, industrial wastes, or other wastes,
90 or the effluent therefrom, into or near any waters of
91 the state or into any underground strata, and any and all
92 persons operating an establishment which produces or
93 which may produce or from which escapes, releases or
94 emanates or may escape, release or emanate treated
95 or untreated sewage, industrial wastes or other wastes
96 or the effluent therefrom, into or near any waters of
97 the state or into any underground strata, to file with

98 the division of water resources such information as
99 the chief may require in a form or manner prescribed
100 by him for such purpose, including, but not limited to,
101 data as to the kind, characteristics, amount and rate of
102 flow of any such discharge, deposit, escape, release or
103 disposition.

104 (b) In addition to all other powers and duties of the
105 water resources board, as prescribed in this article or
106 elsewhere by law, the board shall have and may exercise
107 the following powers and authority and shall per-
108 form the following duties:

109 (1) To cooperate with any interstate agencies for
110 the purpose of formulating, for submission to the
111 Legislature, interstate compacts and agreements relating
112 to the control and reduction of water pollution;

113 (2) To adopt, modify, repeal and enforce rules and
114 regulations, in accordance with the provisions of chapter
115 twenty-nine-a of this code, (A) implementing and making
116 effective the declaration of policy contained in section
117 one of this article and the powers, duties and respon-
118 sibilities vested in the board and the chief by the pro-
119 visions of this article and otherwise by law; (B) pre-
120 venting, controlling and abating pollution; (C) estab-
121 lishing standards of quality for the waters of the state
122 under such conditions as the board may prescribe for
123 the prevention, control and abatement of pollution;
124 and (D) to facilitate the state's participation in the
125 "National Pollutant Discharge Elimination System"
126 pursuant to the "Federal Water Pollution Control Act,"
127 as amended: *Provided*, That no such rule and regulation
128 adopted by the board shall specify the design of equip-
129 ment, type of construction or particular method which a
130 person shall use to reduce the discharge of a pollutant; and

131 (3) To make and enter a consent order which shall
132 have the same effect as an order entered after a hearing
133 as provided in section fifteen of this article.

134 (c) The board is hereby authorized to hire one or
135 more individuals to serve as hearing examiners on a full
136 or part-time basis. Such individuals may be attorneys-

137 at-law admitted to practice before any circuit court of
138 this state. All such hearing examiners shall be individ-
139 uals authorized to take depositions under the laws of
140 this state.

141 (d) Whenever required to carry out the objectives
142 of this article: (A) The chief shall require the owner
143 or operator of any point source or establishment to (i)
144 establish and maintain such records, (ii) make such
145 reports, (iii) install, use and maintain such monitoring
146 equipment or methods, (iv) sample such effluents in
147 accordance with such methods, at such locations, at such
148 intervals and in such manner as the chief shall pre-
149 scribe, and (v) provide such other information as he
150 may reasonably require; and (B) the chief or his au-
151 thorized representative upon presentation of credentials
152 (i) shall have a right of entry to, upon or through any
153 premises in which an effluent source is located or in
154 which any records required to be maintained under
155 (A) of this subsection are located, and (ii) may at
156 reasonable times have access to and copy any records,
157 inspect any monitoring equipment or method required
158 under (A) of this subsection and sample any streams in
159 the area as well as sample any effluents which the owner
160 or operator of such source is required to sample under
161 (A) of this subsection.

162 (e) The board is hereby authorized and empowered
163 to investigate and ascertain the need and factual basis
164 for the establishment of public service districts as a
165 means of controlling and reducing pollution from unin-
166 corporated communities and areas of the state, investi-
167 gate and ascertain, with the assistance of the public
168 service commission, the financial feasibility and pro-
169 jected financial capability of the future operation of any
170 such public service district or districts, and to present re-
171 ports and recommendations thereon to the county com-
172 missions of the areas concerned, together with a re-
173 quest that such county commissions create a public ser-
174 vice district or districts, as therein shown to be needed
175 and required and as provided in article thirteen-a, chap-
176 ter sixteen of this code. In the event a county com-

177 mission shall fail to act to establish a county-wide public
178 service district or districts, the board shall act jointly
179 with the state director of health, the director of the
180 department of natural resources and the chief of the
181 division of water resources to further investigate and
182 ascertain the financial feasibility and projected financial
183 capability and, subject to the approval of the public ser-
184 vice commission, order the county commission to take
185 action to establish such public service district or districts
186 as may be necessary to control, reduce or abate the pollu-
187 tion, and when so ordered the county commission mem-
188 bers must act to establish such a county-wide public
189 service district or districts.

§20-5A-3a. Standards of water quality and effluent limitations.

1 (a) In order to carry out the purposes of this article,
2 the board shall promulgate rules and regulations setting
3 standards of water quality and effluent limitations to
4 be applicable to the waters of this state, which standards
5 of quality and effluent limitations shall be such as to
6 protect the public health and welfare, wildlife, fish and
7 aquatic life, and the present and prospective future
8 uses of such waters for domestic, agricultural, industrial,
9 recreational, scenic and other legitimate beneficial uses
10 thereof.

11 (b) In establishing, amending, revising or repealing
12 rules and regulations relating to the water quality stan-
13 dards and effluent limitations, the board shall follow all
14 procedures provided by article three, chapter twenty-
15 nine-a of the code.

16 (c) All persons affected by rules and regulations es-
17 tablishing water quality standards and effluent limitations
18 shall promptly comply therewith: *Provided*, That where
19 necessary and proper, the chief may specify a reasonable
20 time for persons not complying with such standards and
21 limitations to comply therewith, and upon the expiration
22 of any such period of time, the chief shall revoke or
23 modify any permit previously issued which authorized
24 the discharge of treated or untreated sewage, industrial
25 wastes or other wastes into the waters of this state which

26 result in reduction of the quality of such waters below
27 the standards and limitations established therefor by
28 rules and regulations of the board.

§20-5A-5. Prohibitions; permits required.

1 (a) The chief may, after public notice and opportunity
2 for public hearing, issue a permit for the discharge or
3 disposition of any pollutant or combination of pollutants
4 into waters of this state upon condition that such dis-
5 charge or disposition meets or will meet all applicable
6 state and federal water quality standards and effluent
7 limitations and all other requirements of this article.

8 (b) It shall be unlawful for any person, unless he
9 holds a permit therefor from the department, which is
10 in full force and effect, to:

11 (1) Allow sewage, industrial wastes or other wastes, or
12 the effluent therefrom, produced by or emanating from
13 any point source, to flow into the waters of this state;

14 (2) Make, cause or permit to be made any outlet,
15 or substantially enlarge or add to the load of any exist-
16 ing outlet, for the discharge of sewage, industrial wastes
17 or other wastes, or the effluent therefrom, into the waters
18 of this state;

19 (3) Acquire, construct, install, modify or operate a
20 disposal system or part thereof for the direct or in-
21 direct discharge or deposit of treated or untreated sewage,
22 industrial wastes or other wastes, or the effluent there-
23 from, into the waters of this state, or any extension to
24 or addition to such disposal system;

25 (4) Increase in volume or concentration any sewage,
26 industrial wastes or other wastes in excess of the dis-
27 charges or disposition specified or permitted under any
28 existing permit;

29 (5) Extend, modify or add to any point source, the
30 operation of which would cause an increase in the volume
31 or concentration of any sewage, industrial wastes or
32 other wastes discharging or flowing into the waters of
33 the state;

34 (6) Construct, install, modify, open, reopen, operate
35 or abandon any mine, quarry or preparation plant, or
36 dispose of any refuse or industrial wastes or other wastes
37 from any such mine or quarry or preparation plant:
38 *Provided*, That the department's permit shall only be
39 required wherever the aforementioned activities cause,
40 may cause or might reasonably be expected to cause a
41 discharge into or pollution of waters of the state, except
42 that a permit shall be required for any preparation plant:
43 *Provided, however*, That unless waived in writing by
44 the chief, every application for a permit to open, reopen
45 or operate any mine, quarry or preparation plant or to
46 dispose of any refuse or industrial wastes or other wastes
47 from any such mine or quarry or preparation plant shall
48 contain a plan for abandonment of such facility or opera-
49 tion, which plan shall comply in all respects to the re-
50 quirements of this article. Such plan of abandonment
51 shall be subject to modification or amendment upon ap-
52 plication by the permit holder to the chief and approval
53 of such modification or amendment by the chief;

54 (7) Operate any disposal well for the injection or re-
55 injection underground of any industrial wastes, in-
56 cluding, but not limited to, liquids or gases, or convert
57 any well into such a disposal well or plug or abandon
58 any such disposal well.

59 (c) Where a person has a number of outlets emerging
60 into the waters of this state in close proximity to one
61 another, such outlets may be treated as a unit for the
62 purposes of this section, and only one permit issued for
63 all such outlets.

**§20-5A-6. Form of application for permit; information re-
quired; fees.**

1 The chief shall prescribe a form of application for all
2 permits for any activity specified in section five of this
3 article and, notwithstanding any other provision of law
4 to the contrary, no other discharge permit or discharge
5 authorization from any other state department, agency,
6 commission, board or officer shall be required for such
7 activity except that which is required from the depart-

8 ment of mines by the provisions of chapter twenty-two
9 of this code. All applications must be submitted on a
10 form as prescribed above. An applicant shall furnish all
11 information reasonably required by any such form, in-
12 cluding without limiting the generality of the foregoing,
13 a plan of maintenance and proposed method of operation
14 of the activity or activities. Until all such required in-
15 formation is furnished, an application shall not be con-
16 sidered a complete application. The chief and board shall
17 protect any information (other than effluent data) con-
18 tained in such permit application form, or other records,
19 reports or plans as confidential upon a showing by any
20 person that such information, if made public, would di-
21 vulge methods or processes entitled to protection as
22 trade secrets of such person. If, however, the information
23 being considered for confidential treatment is contained
24 in a national pollutant discharge elimination form, the
25 chief or board shall forward such information to the
26 regional administrator of the United States environmental
27 protection agency for his concurrence in any determina-
28 tion of confidentiality. A reasonable filing fee, as de-
29 termined by rules and regulations of the board, shall
30 accompany the application when filed with the division
31 of water resources. The filing fee shall be deposited in
32 the state treasury to the credit of the state general fund.
33 The filing fee shall not be returned to the applicant.

**§20-5A-7. Procedure concerning permits required under ar-
ticle; transfer of permits; prior permits.**

1 (a) The chief or his duly authorized representatives
2 shall conduct such investigation as is deemed necessary
3 and proper in order to determine whether any such ap-
4 plication should be granted or denied. In making such in-
5 vestigation and determination as to any application per-
6 taining solely to sewage, the chief shall consult with the
7 director of the division of sanitary engineering of the
8 state department of health, and in making such investiga-
9 tion and determination as to any application pertaining to
10 any activity specified in subdivision (7), subsection (b),
11 section five of this article, the chief shall consult with the
12 director of the state geological and economic survey and the

13 deputy director of the oil and gas division of the depart-
14 ment of mines, and all such persons shall cooperate with the
15 chief and assist him in carrying out the duties and respon-
16 sibilities imposed upon him under the provisions of this
17 article and the rules and regulations of the board; such
18 cooperation shall include, but not be limited to, a written
19 recommendation approving or disapproving the granting
20 of the permit and the reason or reasons for such recom-
21 mendation, which recommendation and the reason or
22 reasons therefor shall be submitted to the chief within the
23 specified time period prescribed by rules and regulations
24 of the board.

25 (b) The department's permit shall be issued upon such
26 reasonable terms and conditions as the chief may direct
27 if (1) the application, together with all supporting infor-
28 mation and data and other evidence, establishes that any
29 and all discharges or releases, escapes, deposits and dis-
30 position of treated or untreated sewage, industrial wastes,
31 or other wastes, or the effluent therefrom, resulting from
32 the activity or activities for which the application for a
33 permit was made will not cause pollution of the waters of
34 this state or violate any effluent limitations or any rules
35 and regulations of the board: *Provided*, That the chief
36 may issue a permit whenever in his judgment the water
37 quality standards of the state may be best protected by
38 the institution of a program of phased pollution abate-
39 ment which under the terms of the permit may temporar-
40 ily allow a limited degree of pollution of the waters of
41 the state; and (2) in cases wherein it is required, such
42 applicant shall include the name and address of the re-
43 sponsible agent as set forth in section eight-b of this
44 article.

45 (c) Each permit issued under this article shall have a
46 fixed term not to exceed five years. Upon expiration of a
47 permit, a new permit may be issued by the chief
48 upon condition that the discharges or releases, escapes,
49 deposits and disposition thereunder meet or will meet all
50 applicable state and federal water quality standards,
51 effluent limitations and all other requirements of this
52 article.

53 (d) An application for a permit incident to remedial
54 action in accordance with the provisions of section eleven
55 of this article shall be processed and decided as any other
56 application for a permit required under the provisions of
57 section five of this article.

58 (e) A complete application for any permit shall be
59 acted upon by the chief, and the department's permit
60 delivered or mailed, or a copy of any order of the chief
61 denying any such application delivered or mailed to the
62 applicant by the chief, within a reasonable time period
63 as prescribed by rules and regulations of the board.

64 (f) When it is established that an application for a per-
65 mit should be denied, the chief shall make and enter an
66 order to that effect, which order shall specify the reasons
67 for such denial, and shall cause a copy of such order to be
68 served on the applicant by registered or certified mail.
69 The chief shall also cause a notice to be served with a
70 copy of such order, which notice shall advise the appli-
71 cant of his right to appeal to the board by filing a notice of
72 appeal on the form prescribed by the board for such pur-
73 pose, with the board, in accordance with the provisions of
74 section fifteen of this article, within thirty days after the
75 date upon which the applicant received the copy of such
76 order. However, an applicant may alter the plans and
77 specifications for the proposed activity and submit a new
78 application for any such permit, in which event the
79 procedure hereinbefore outlined with respect to an origi-
80 nal application shall apply.

81 (g) Upon the sale of property which includes an
82 activity for which the department's permit was granted,
83 the permit shall be transferable to the new owner, but
84 the transfer shall not become effective until the provisions
85 of section eight-b of this article are fully complied with,
86 and until such transfer is made in the records of the
87 division of water resources.

88 (h) All permits for the discharge of sewage, industrial
89 wastes or other wastes into any waters of the state issued
90 by the water resources board prior to July one, one thou-
91 sand nine hundred sixty-four, and all permits heretofore

92 issued under the provisions of this article, and which have
93 not been heretofore revoked, are subject to review, revo-
94 cation, suspension, modification and reissuance in accor-
95 dance with the terms and conditions of this article and the
96 rules and regulations promulgated thereunder. Any order
97 of revocation, suspension or modification made and en-
98 tered pursuant to this subsection shall be upon at least
99 twenty days' notice and shall specify the reasons for such
100 revocation, suspension or modification and the chief shall
101 cause a copy of such order, together with a copy of a
102 notice of the right to appeal to the board as provided for
103 in section eight of this article, to be served upon the
104 permit holder as specified in said section eight.

**§20-5A-8. Inspections; orders to compel compliance with per-
mits; service of orders.**

1 After issuance of the department's permit for any ac-
2 tivity the chief or his duly authorized representatives
3 may make field inspections of the work on the activity,
4 and, after completion thereof, may inspect the completed
5 activity, and, from time to time, may inspect the main-
6 tenance and operation of the activity.

7 To compel compliance with the terms and conditions
8 of the department's permit for any activity, the chief is
9 hereby authorized, after at least twenty days' notice,
10 to make and enter an order revoking, suspending or modi-
11 fying in whole or in part such permit for cause including,
12 but not limited to, the following:

- 13 (1) Violation of any term or condition of the permit;
- 14 (2) Obtaining a permit by misrepresentation, or fail-
15 ure to disclose fully all relevant facts; or
- 16 (3) Change in any condition that requires either a
17 temporary or permanent reduction or elimination of the
18 permitted discharge, release, escape, deposit or disposi-
19 tion.

20 The chief shall cause a copy of any such order to be
21 served by registered or certified mail or by a conservation
22 officer or other law-enforcement officer upon the person

23 to whom any such permit was issued. The chief shall
24 also cause a notice to be served with a copy of such
25 order, which notice shall advise such person of his right
26 to appeal to the board by filing a notice of appeal on
27 the form prescribed by the board for such purpose, with
28 the board, in accordance with the provisions of section
29 fifteen of this article, within thirty days after the date
30 upon which such person received the copy of such order.

**§20-5A-10. Orders of chief to stop or prevent discharges or
deposits or take remedial action; service of
orders.**

1 If the chief, on the basis of investigations, inspections
2 and inquiries, determines that any person who does not
3 have a valid permit issued pursuant to the provisions of
4 this article is causing the pollution of any of the waters
5 of the state, or does on occasions cause pollution or is
6 violating any rule or regulation or effluent limitation of
7 the board, he shall, with the consent of the director,
8 either make and enter an order directing such person
9 to stop such pollution or the violation of the rule or
10 regulation or effluent limitation of the board, or make
11 and enter an order directing such person to take correc-
12 tive or remedial action. Such order shall contain findings
13 of fact upon which the chief based his determination to
14 make and enter such order. Such order shall also direct
15 such person to apply forthwith for a permit in accordance
16 with the provisions of sections five, six and seven of this
17 article. The chief shall fix a time limit for the completion
18 of such action. Whether the chief shall make and enter
19 an order to stop such pollution or shall make and enter
20 an order to take remedial action, in either case the person
21 so ordered may elect to cease operations of the establish-
22 ment deemed to be the source of such discharge or de-
23 posits causing pollution, if the pollution referred to in
24 the chief's order shall be stopped thereby.

25 The chief shall cause a copy of any such order to be
26 served by registered or certified mail or by a conserva-
27 tion officer or other law-enforcement officer upon such
28 person. The chief shall also cause a notice to be served

29 with the copy of such order, which notice shall advise
30 such person of his right to appeal to the board by filing
31 a notice of appeal, on the form prescribed by the board
32 for such purpose, with the board, in accordance with
33 the provisions of section fifteen of this article.

**§20-5A-12. Duty to proceed with remedial action promptly
upon receipt of permit; progress reports required;
finances and funds.**

1 When such person is ordered to take remedial action
2 and does not elect to cease operation of the establish-
3 ment deemed to be the source of such pollution or when
4 ceasing does not stop the pollution, such person shall
5 immediately upon issuance of the permit required under
6 section eleven of this article take or begin appropriate
7 steps or proceedings to carry out such remedial action.
8 In any such case it shall be the duty of each individual
9 offender, each member of a partnership, each member
10 of the governing body of a municipal corporation and
11 each member of the board of directors or other govern-
12 ing body of a private corporation, association or other
13 legal entity whatever, to see that appropriate steps or
14 proceedings to comply with such order are taken or
15 begun immediately. The chief may require progress
16 reports, at such time intervals as he deems necessary,
17 setting forth the steps taken, the proceedings started
18 and the progress made toward completion of such remedial
19 action. All such remedial action shall be diligently pros-
20 ecuted to completion.

21 Failure of the governing body of a municipal corpora-
22 tion, or the board of directors or other governing body
23 of any private corporation, association or other legal
24 entity whatever, to provide immediately for the financing
25 and carrying out of such remedial action, as may be
26 necessary to comply with said order, shall constitute
27 failure to take or begin appropriate steps or proceedings
28 to comply with such order. If such person be a municipal
29 corporation, the cost of all such remedial action as may
30 be necessary to comply with said order shall be paid
31 out of funds on hand available for such purpose, or out
32 of the general funds of such municipal corporation, not

33 otherwise appropriated, and if there be not sufficient
34 funds on hand or unappropriated, then the necessary
35 funds shall be raised by the issuance of bonds, any direct
36 general obligation bond issue to be subject to the ap-
37 proval of the state sinking fund commission and the at-
38 torney general of the state of West Virginia.

39 If the estimated cost of the remedial action to be taken
40 by a municipal corporation to comply with such order
41 is such that any bond issue necessary to finance such
42 action would not raise the total outstanding bonded
43 indebtedness of such municipal corporation in excess of
44 the constitutional limit imposed upon such indebted-
45 ness by the constitution of this state, then and in that
46 event the necessary bonds may be issued as a direct
47 obligation of such municipal corporation, and retired
48 by a general tax levy to be levied against all property
49 within the limit of such municipal corporation listed and
50 assessed for taxation. If the amount of such bonds
51 necessary to be issued would raise the total outstanding
52 bonded indebtedness of such municipal corporation above
53 said constitutional limitation on such indebtedness, or
54 if such municipal corporation by its governing body shall
55 decide against the issuance of direct obligation bonds,
56 then such municipal corporation shall issue revenue
57 bonds and provide for the retirement thereof in the
58 same manner and subject to the same conditions as pro-
59 vided for the issuance and retirement of bonds in chapter
60 twenty-five, acts of the Legislature, first extraordinary
61 session, one thousand nine hundred thirty-three, and any
62 amendment thereof: *Provided*, That the provisions of
63 section six of the above mentioned act, allowing ob-
64 jections to be filed with the governing body, and provid-
65 ing that a written protest of thirty percent or more of the
66 owners of real estate shall require a four-fifths vote of
67 the governing body for the issuance of said revenue
68 bonds, shall not apply to bond issues proposed by any
69 municipal corporation to comply with an order made
70 and entered under the authority of this article, and such
71 objections and submission of written protest shall not
72 be authorized, nor shall the same, if made or had, operate
73 to justify or excuse failure to comply with such order.

74 The funds made available by the issuance of either
75 direct obligation bonds or revenue bonds, as herein
76 provided, shall constitute a "sanitary fund," and shall be
77 used for no other purpose than for carrying out such
78 order; no public money so raised shall be expended by
79 any municipal corporation for any purpose enumerated
80 in this article, unless such expenditure and the amount
81 thereof have been approved by the chief. The acquisi-
82 tion, construction or installation, use and operation, re-
83 pair, modification, alteration, extension, equipment, cus-
84 tody and maintenance of any disposal system by any
85 municipal corporation, as herein provided, and the rights,
86 powers and duties with respect thereto, of such municipi-
87 pal corporation and the respective officers and depart-
88 ments thereof, whether the same shall be financed by
89 the issuance of revenue or direct obligation bonds, shall
90 be governed by the provisions of said chapter twenty-
91 five, acts of the Legislature, first extraordinary session,
92 one thousand nine hundred thirty-three, and any amend-
93 ments thereof.

§20-5A-15. Appeal to water resources board.

1 (a) Any person adversely affected by an order made
2 and entered by the chief in accordance with the provi-
3 sions of this article, or aggrieved by failure or refusal of
4 the chief to act within the specified time as provided in
5 subsection (e) of section seven of this article on an applica-
6 tion for a permit or aggrieved by the terms and conditions
7 of a permit granted under the provisions of this article,
8 may appeal to the water resources board for an order va-
9 cating or modifying such order, or for such order, action
10 or terms and conditions as the chief should have entered,
11 taken or imposed. The person so appealing shall be known
12 as the appellant and the chief shall be known as the ap-
13 pellee. If the chief denies a permit because of any disap-
14 proval of a permit application by one or more of the public
15 officers required to review such applications under the
16 provisions of subsection (a), section seven of this article,
17 such public officers shall be joined as a coappellee or co-
18 appellees with the chief in such appeal.

19 (b) Such appeal shall be perfected by filing a notice of
20 appeal, on the form prescribed by the board for such
21 purpose, with the board within thirty days after date upon
22 which the appellant received the copy of such order or
23 received such permit, as the case may be. The filing of the
24 notice of appeal shall not stay or suspend the execution of
25 the order appealed from. If it appears to the director or
26 the board that an unjust hardship to the appellant will
27 result from the execution of the chief's order pending
28 determination of the appeal, the director or the board
29 may grant a suspension of such order and fix its terms.
30 The notice of appeal shall set forth the order or terms
31 and conditions complained of and the grounds upon which
32 the appeal is based. A copy of the notice of appeal shall
33 be filed by the board with the chief within three days
34 after the notice of appeal is filed with the board.

35 (c) Within seven days after receipt of his copy of the
36 notice of appeal, the chief shall prepare and certify to the
37 board a complete record of the proceedings out of which
38 the appeal arises including all documents and correspon-
39 dence in the chief's file relating to the matter in question.
40 With the consent of the board and upon such terms and
41 conditions as the board may prescribe, any persons affect-
42 ed by any such activity or by such alleged pollution may
43 by petition intervene as a party appellant or appellee. The
44 board shall hear the appeal de novo, and evidence may be
45 offered on behalf of the appellant and appellee, and, with
46 the consent of the board, by any intervenors.

47 (d) All of the pertinent provisions of article five, chap-
48 ter twenty-nine-a of this code shall apply to and govern
49 the hearing on appeal authorized by this section and the
50 administrative procedures in connection with and follow-
51 ing such hearing, with like effect as if the provisions of
52 said article five were set forth in extenso in this section,
53 with the following modifications or exceptions:

54 (1) Unless the board directs otherwise, the appeal
55 hearing shall be held in the city of Charleston, Kanawha
56 County, West Virginia, and

57 (2) In accordance with the provisions of section one,

58 article five of said chapter twenty-nine-a, all of the testi-
59 mony at any such hearing shall be recorded by steno-
60 graphic notes and characters or by mechanical means.
61 Such reported testimony shall in every appeal hearing
62 under this article be transcribed.

63 (e) Any such appeal hearing shall be conducted by a
64 quorum of the board, but the parties may by stipulation
65 agree to take evidence before a hearing examiner em-
66 ployed by the board. For the purpose of conducting such
67 appeal hearing, any member of the board and the secre-
68 tary thereof shall have the power and authority to issue
69 subpoenas and subpoenas duces tecum in the name of
70 the board, in accordance with the provisions of section
71 one, article five, chapter twenty-nine-a of this code. All
72 subpoenas and subpoenas duces tecum shall be issued and
73 served within the time and for the fees and shall be en-
74 forced, as specified in section one, article five of said
75 chapter twenty-nine-a, and all of the said section one
76 provisions dealing with subpoenas and subpoenas duces
77 tecum shall apply to subpoenas and subpoenas duces te-
78 cum issued for the purpose of an appeal hearing here-
79 under.

80 (f) Any such hearing shall be held within twenty days
81 after the date upon which the board received the timely
82 notice of appeal, unless there is a postponement or con-
83 tinuance. The board may postpone or continue any hear-
84 ing upon its own motion, or upon application of the
85 appellant, the appellee or any intervenors for good cause
86 shown. The chief shall be represented at any such hearing
87 by the attorney general or his assistants, or the chief,
88 with the written approval of the attorney general, may
89 employ counsel to represent him. At any such hearing the
90 appellant and any intervenor may represent himself or be
91 represented by an attorney at law admitted to practice
92 before any circuit court of this state.

93 (g) After such hearing and consideration of all the
94 testimony, evidence and record in the case, the board
95 shall make and enter an order affirming, modifying or
96 vacating the order of the chief, or shall make and enter

97 such order as the chief should have entered, or shall make
98 and enter an order approving or modifying the terms and
99 conditions of any permit issued. In determining its course
100 of action, the board shall take into consideration not only
101 the factors which the chief was authorized to consider in
102 making his order and in fixing the terms and conditions
103 of any permit, but also the economic feasibility of treat-
104 ing and/or controlling the sewage, industrial wastes or
105 other wastes involved.

106 (h) Such order shall be accompanied by findings of fact
107 and conclusions of law as specified in section three, article
108 five, chapter twenty-nine-a of this code, and a copy of
109 such order and accompanying findings and conclusions
110 shall be served upon the appellant, and any intervenors,
111 and their attorneys of record, if any, and upon the ap-
112 pellee in person or by registered or certified mail.

113 (i) The board shall also cause a notice to be served with
114 the copy of such order, which notice shall advise the ap-
115 pellant, the appellee and any intervenors of their right
116 to judicial review, in accordance with the provisions of
117 section sixteen of this article. The order of the board shall
118 be final unless vacated or modified upon judicial review
119 thereof in accordance with the provisions of section six-
120 teen of this article.

§20-5A-16. Judicial review.

1 (a) Any person or the chief adversely affected by an
2 order made and entered by the board after such appeal
3 hearing, held in accordance with the provisions of sec-
4 tion fifteen of this article, is entitled to judicial review
5 thereof. All of the provisions of section four, article
6 five, chapter twenty-nine-a of this code shall apply
7 to and govern such review with like effect as if the
8 provisions of said section four were set forth in ex-
9 tenso in this section, with the following modifications
10 or exceptions:

11 (1) As to cases involving an order denying an appli-
12 cation for a permit, or approving or modifying the terms
13 and conditions of a permit, the petition shall be filed,

14 within the time specified in said section four, in the
15 circuit court of Kanawha County;

16 (2) As to cases involving an order revoking or sus-
17 pending a permit, the petition shall be filed, within
18 the time specified in said section four, in the circuit
19 court of Kanawha County; and

20 (3) As to cases involving an order directing that any
21 and all discharges or deposits of sewage, industrial
22 wastes or other wastes, or the effluent therefrom, deter-
23 mined to be causing pollution, be stopped or prevented
24 or else that remedial action be taken, the petition shall
25 be filed, within the time specified in said section four, in
26 the circuit court of the county in which the establish-
27 ment is located or in which the pollution occurs.

28 (b) The judgment of the circuit court shall be final
29 unless reversed, vacated or modified on appeal to the
30 supreme court of appeals, in accordance with the provi-
31 sions of section one, article six, chapter twenty-nine-a
32 of this code, except that notwithstanding the provisions
33 of said section one the petition seeking such review must
34 be filed with said supreme court of appeals within ninety
35 days from the date of entry of the judgment of the
36 circuit court.

37 (c) Legal counsel and services for the chief in all
38 appeal proceedings in the circuit court and in the supreme
39 court of appeals of this state shall be provided by the
40 attorney general or his assistants and in appeal pro-
41 ceedings in the circuit court by the prosecuting attorney
42 of the county in which the appeal is taken, all without
43 additional compensation, or the chief, with the written
44 approval of the attorney general, may employ counsel
45 to represent him.

§20-5A-17. Civil penalties and injunctive relief.

1 Any person who violates any provision of any permit
2 issued under or subject to the provisions of this article
3 shall be subject to a civil penalty not to exceed ten
4 thousand dollars per day of such violation, and any
5 person who violates any provision of this article or of

6 any rule and regulation or who violates any standard
7 or order promulgated or made and entered under the
8 provisions of this article shall be subject to a civil penalty
9 not to exceed ten thousand dollars per day of such vio-
10 lation. Any such civil penalty may be imposed and col-
11 lected only by a civil action instituted by the chief in
12 the circuit court of the county in which the violation oc-
13 curred or is occurring or of the county in which the
14 waters thereof are polluted as the result of such violation.

15 Upon application by the chief, the circuit courts of this
16 state or the judges thereof in vacation may by injunc-
17 tion compel compliance with and enjoin violations of
18 the provisions of this article, the rules and regulations
19 of the board, effluent limitations, the terms and condi-
20 tions of any permit granted under the provisions of
21 this article, or any order of the chief or board, and the
22 venue of any such action shall be the county in which
23 the violation or noncompliance exists or is taking place
24 or in any county in which the waters thereof are polluted
25 as the result of such violation or noncompliance. The
26 court or the judge thereof in vacation may issue a
27 temporary or preliminary injunction in any case pend-
28 ing a decision on the merits of any injunctive applica-
29 tion filed. Any other section of this code to the contrary
30 notwithstanding, the state shall not be required to furnish
31 bond as a prerequisite to obtaining injunctive relief under
32 this article. An application for an injunction under
33 the provisions of this section may be filed and injunc-
34 tive relief granted notwithstanding that all of the ad-
35 ministrative remedies provided for in this article have
36 not been pursued or invoked against the person or
37 persons against whom such relief is sought and notwith-
38 standing that the person or persons against whom such
39 relief is sought have not been prosecuted or convicted
40 under the provisions of this article.

41 The judgment of the circuit court upon any applica-
42 tion filed or in any civil action instituted under the pro-
43 visions of this section shall be final unless reversed,
44 vacated or modified on appeal to the supreme court of
45 appeals. Any such appeal shall be sought in the manner

46 provided by law for appeals from circuit courts in other
47 civil cases, except that the petition seeking review in
48 any injunctive proceeding must be filed with said supreme
49 court of appeals within ninety days from the date of
50 entry of the judgment of the circuit court.

51 Legal counsel and services for the chief or the board
52 in all civil penalty and injunction proceedings in the
53 circuit court and in the supreme court of appeals of
54 this state shall be provided by the attorney general or
55 his assistants and by the prosecuting attorneys of the
56 several counties as well, all without additional compen-
57 sation, or the chief or the board, with the written ap-
58 proval of the attorney general, may employ counsel to
59 represent him or it in a particular proceeding.

§20-5A-19. Violations; criminal penalties.

1 Any person who causes pollution or who fails or re-
2 fuses to discharge any duty imposed upon him by this
3 article or by any rule or regulation of the board, promul-
4 gated pursuant to the provisions and intent of this article,
5 or by an order of the chief or board, or who fails or re-
6 fuses to apply for and obtain a permit as required by the
7 provisions of this article, or who fails or refuses to comply
8 with any term or condition of such permit, shall be guilty
9 of a misdemeanor, and, upon conviction thereof, shall
10 be punished by a fine of not less than one hundred
11 dollars nor more than one thousand dollars, or by im-
12 prisonment in the county jail for a period not exceeding
13 six months, or by both such fine and imprisonment.

14 Any person who shall intentionally misrepresent any
15 material fact in an application, record, report, plan or
16 other document filed or required to be maintained under
17 the provisions of this article or any rules and regulations
18 promulgated by the board thereunder shall be guilty of
19 a misdemeanor, and, upon conviction thereof, shall be
20 punished by a fine of not less than one thousand dollars
21 nor more than ten thousand dollars or by imprisonment
22 in the county jail not exceeding six months or by both
23 such fine and imprisonment.

24 Any person who willfully or negligently violates any
25 provision of any permit issued under or subject to the
26 provisions of this article or who willfully or negligently
27 violates any provision of this article or any rule or regu-
28 lation of the board or any effluent limitation or any
29 order of the chief or board shall be guilty of a misde-
30 meanor, and, upon conviction thereof, shall be punished
31 by a fine of not less than two thousand five hundred dol-
32 lars nor more than twenty-five thousand dollars per
33 day of violation or by imprisonment in the county jail
34 not exceeding one year or by both such fine and im-
35 prisonment.

36 Any such person may be prosecuted and convicted
37 under the provisions of this section notwithstanding
38 that none of the administrative remedies provided for
39 in this article have been pursued or invoked against said
40 person and notwithstanding that a civil action for the
41 imposition and collection of a civil penalty or an appli-
42 cation for an injunction under the provisions of this ar-
43 ticle has not been filed against such person.

44 Where a person holding a permit is carrying out a pro-
45 gram of pollution abatement or remedial action in com-
46 pliance with the conditions and terms of such permit,
47 he shall not be subject to criminal prosecution for pollu-
48 tion recognized and authorized by such permit.

CHAPTER 81

(Com. Sub. for H. B. 950—By Mr. Tighs and Mr. McNelly)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter twenty 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 prohibiting mining in the Cranberry wilderness study area.

Be it enacted by the Legislature of West Virginia:

That article six-a, 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 two, to read as follows:

ARTICLE 6A. LIMITATIONS ON SURFACE MINING.

§20-6A-2. Limitation on mining in the Cranberry wilderness study area.

1 Commencing on the effective date of this section, and end-
2 ing on the last day of December, one thousand nine hundred
3 eighty, no new permits, including prospecting permits, shall
4 be issued, or any existing permits renewed, under the pro-
5 visions of article six of this chapter for the surface mining of
6 coal or any other mineral or under the provisions of article
7 two, chapter twenty-two of this code for the underground min-
8 ing of coal within or underneath what is known as the Cran-
9 berry wilderness study area, located in Webster and Poca-
10 hontas Counties as the same is described in the Eastern Wil-
11 derness Act, Public Law No. 93-622, 42 U.S.C.A., section
12 1132, et seq.; and any such existing permits to surface or
13 underground mine within or underneath such area shall im-
14 mediately terminate and all land restoration and reclamation
15 required pursuant thereto shall be completed prior to the first
16 day of January, one thousand nine hundred seventy-nine.

CHAPTER 82

(S. B. 532—Originating in the Committee on Finance)

[Passed March 13, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to conservation officers; excluding conservation officers from coverage of wage and hour law;

providing for supplemental payments in lieu of overtime and maximum amount thereof; requiring director of department of natural resources to promulgate rule or regulation as to supplemental payments and criteria; and requiring director to certify or cause to be certified eligibility of officers for supplemental payments and amounts thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-1a. Conservation officers excluded from coverage of wage and hour laws; supplemental pay in lieu of overtime; regulation.

1 The Legislature finds and declares that the supreme
2 court of appeals of West Virginia has held that conserva-
3 tion officers are covered by the provisions of the state
4 wage and hour law, article five-c, chapter twenty-one of
5 this code. The Legislature further finds and declares
6 that because of the unique duties of conservation officers,
7 it is not appropriate to apply said wage and hour pro-
8 visions to them. Accordingly, conservation officers are
9 hereby excluded from the provisions of said wage and
10 hour law. In lieu of any overtime pay they might other-
11 wise have received under the wage and hour law, eligible
12 conservation officers shall receive in addition to their
13 salaries a monthly supplemental payment not to exceed
14 one hundred seventy-five dollars per month.

15 The director of the department of natural resources
16 shall, within thirty days after the effective date hereof,
17 promulgate a rule or regulation to establish the standard
18 work week for conservation officers. Such rule or regula-
19 tion shall establish, on a graduated hourly basis, the cri-
20 teria for receipt of a portion or all of such supplemental
21 payment for hours worked in excess of said standard work

22 week. Such rule or regulation shall be promulgated pur-
23 suant to the provisions of chapter twenty-nine-a of the
24 code. The director shall certify or cause to be certified
25 monthly the names of those conservation officers who
26 have worked hours in excess of the standard work week
27 and the amount of their supplemental payment.

CHAPTER 83

(S. B. 313—By Mr. Hatfield)

[Passed March 10, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the qualifications of persons selected as conservation officers.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§20-7-2. Qualifications, etc., of conservation officers.

1 In addition to civil service qualifications and require-
2 ments, persons selected as conservation officers shall
3 have reached their eighteenth birthday and shall not
4 have reached their fortieth birthday at the time of ap-
5 pointment, be in good physical condition and of good
6 moral character, temperate in habits and shall not have
7 been convicted of a felony. Whenever possible and prac-
8 ticable, preference in selection of conservation officers
9 shall be given honorably discharged United States mili-
10 tary personnel. Each conservation officer, before entering
11 upon the discharge of his duties, shall take and subscribe
12 to the oath of office prescribed in article four, section

13 five of the constitution of West Virginia, which executed
14 oath shall be filed with the director.

15 With the exception of the chief conservation officer,
16 each full-time, salaried conservation officer appointed
17 under the provisions of this chapter shall, upon attaining
18 the age of sixty-five, be required to accept a mandatory
19 retirement from the division of law enforcement. The
20 director shall notify such officer in writing at least ninety
21 days prior to his sixty-fifth birthday of the effective date
22 of his retirement and all such benefits and privileges
23 that such officer has accrued. The provisions of this sec-
24 tion shall not be construed to mean that a conservation
25 officer cannot accept at his own request an earlier re-
26 tirement, or that he cannot continue to be employed by
27 some other division or department of state government.

28 The director shall prescribe the kind, style and material
29 of uniforms to be worn by conservation officers. Uniforms
30 and other equipment furnished to the conservation offi-
31 cers shall be and remain the property of the state.

CHAPTER 84

(Com. Sub. for H. B. 1670—By Mr. Speaker, Mr. Kopp, and Mr. Sattes)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-k, two, two-a, two-b, three, four, five, nine, ten and eleven, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article four by adding thereto two new sections, designated sections three-b and three-c; and to amend said chapter twenty-two by adding thereto a new article, designated article four-b, all relating to oil and gas wells generally; providing definitions; relating to contents of applications; providing for notice to coal seam owners and operators of the filing of certain applications; providing for filing of objections by coal seam

owners and operators to proposed deep gas well and oil well drilling sites; specifying procedures to be followed if any such objections are filed; requiring preparation by the department of mines of a record of such proceedings relating thereto; providing for filing of objections by coal seam owners and operators to proposed shallow gas well drilling sites; specifying procedures to be followed if any such objections are filed; requiring preparation by the department of mines of a record of such proceedings relating thereto; specifying by reference to date filed the applications for permits to drill shallow gas wells with respect to which certain amendments made to said article four by this act shall apply; providing for judicial review of orders of issuance or refusal of permits to drill or fracture and procedures with respect thereto; relating to protective devices to be used by well operators when a well penetrates a workable coal bed; specifying methods of plugging wells; requiring the testing of such wells prior to mining; establishing a shallow gas well review board; setting forth declarations of public policy and legislative findings; providing definitions; relating to application of article four-b; specifying by reference to date filed the applications for permits to drill shallow gas wells with respect to which certain provisions of article four-b shall apply; relating to board membership, appointment, vacancies, compensation and expenses; relating to the staff for such board; relating to meetings and the general powers and duties of such board, including the power to issue subpoenas; authorizing such board to promulgate reasonable rules and regulations under certain procedures; providing for conferences and meetings of the board to consider objections to proposed drilling; authorizing the board to issue written orders; establishing specific criteria for consideration by the board in establishing shallow gas well drilling locations; establishing mandatory distance limitations for shallow gas wells; authorizing such board to accept applications to establish drilling units and specifying the contents of such applications; authorizing the board to establish drilling units and providing for procedures with respect thereto; placing certain limitations on such board in granting applications to establish drilling units; authorizing such board to pool interest in a drilling unit and establishing procedures to be followed with respect

thereto; placing certain limitations on when drilling may be initiated or completed; relating to the effect of an order establishing a drilling unit or pooling of interests and providing for recordation thereof; providing for judicial review of orders of such board; relating to the effect of operation on drilling units; relating to the validity of unit agreements; authorizing the board to obtain injunctive relief against persons violating the provisions of said article four-b; and providing criminal offenses and penalties for violations.

Be it enacted by the Legislature of West Virginia:

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

Article

4. Oil and Gas Wells.

4B. Shallow Gas Well Review Board.

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.

§22-1-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.

§22-4-3. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.

§22-4-3b. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats;

issuance of permits.

§22-4-3c. Applicability.

§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

§22-4-5. Protective devices—When well penetrates workable coal bed.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

§22-4-10. Methods of plugging well.

§22-4-11. When coal operator to file maps and plans as prerequisite to extension of coal operations; petition for leave to conduct operations within two hundred feet of well or to mine through a well; proceedings thereon.

§22-4-1. Definitions.

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

3 (a) "Casing" means a string or strings of pipe commonly
4 placed in wells drilled for natural gas or petroleum or both;

5 (b) "Cement" means hydraulic cement properly mixed with
6 water;

7 (c) "Chairman" means the chairman of the West Virginia
8 shallow gas well review board as provided for in section four,
9 article four-b of this chapter;

10 (d) "Chief" means chief of the division of water resources
11 of the department of natural resources;

12 (e) "Coal operator" means any person or persons, firm,
13 partnership, partnership association or corporation that pro-
14 poses to or does operate a coal mine;

15 (f) "Coal seam" and "workable coal bed" are interchange-
16 able terms and mean any seam of coal twenty inches or more
17 in thickness, unless a seam of less thickness is being com-
18 mercially worked, or can in the judgment of the department
19 foreseeably be commercially worked and will require protec-
20 tion if wells are drilled through it;

21 (g) "Deep well" means any well drilled and completed in
22 a formation at or below the top of the uppermost member of
23 the "Onondaga Group" or at a depth of or greater than six
24 thousand feet, whichever is shallower;

25 (h) "Department" or "department of mines" means the

26 duly constituted authorities under the laws of this state having
27 jurisdiction over coal mining operations;

28 (i) "Deputy director" means the deputy director for oil
29 and gas of the department of mines;

30 (j) "Expanding cement" means any cement approved by
31 the department which expands during the hardening process,
32 including but not limited to regular oil field cements with
33 the proper additives;

34 (k) "Facility" means any facility utilized in the oil and
35 gas industry in this state and specifically named or referred
36 to in this article or in articles five or seven of this chapter,
37 other than a well or well site;

38 (l) "Gas" means all natural gas and all other fluid hydro-
39 carbons not defined as oil in subdivision (m) of this section;

40 (m) "Oil" means natural crude oil or petroleum and other
41 hydrocarbons, regardless of gravity, which are produced at
42 the well in liquid form by ordinary production methods and
43 which are not the result of condensation of gas after it leaves
44 the underground reservoirs;

45 (n) "Owner" when used with reference to any well, shall
46 include any person or persons, firm, partnership, partnership
47 association or corporation that owns, manages, operates,
48 controls or possesses such well as principal, or as lessee
49 or contractor, employee or agent of such principal;

50 (o) "Owner" when used with reference to any coal seam,
51 shall include any person or persons who own, lease or operate
52 such coal seam;

53 (p) "Person" means any natural person, corporation, firm,
54 partnership, partnership association, venture, receiver, trustee,
55 executor, administrator, guardian, fiduciary or other repre-
56 sentative of any kind, and includes any government or any
57 political subdivision or any agency thereof;

58 (q) "Plat" means a map, drawing or print showing the
59 location of a well or wells as herein defined;

60 (r) "Review board" means the West Virginia shallow gas
61 well review board as provided for in section four, article
62 four-b of this chapter;

63 (s) "Safe mining through of a well" means the mining of
64 coal in a workable coal bed up to a well which penetrates
65 such workable coal bed and through such well so that the
66 casing or plug in the well bore where the well penetrates the
67 workable coal bed is severed;

68 (t) "Shallow well" means any gas well drilled and com-
69 pleted in a formation above the top of the uppermost member
70 of the "Onondaga Group" or at a depth less than six thousand
71 feet, whichever is shallower;

72 (u) "Stimulate" means any action taken by well operator
73 to increase the inherent productivity of an oil or gas well
74 including, but not limited to, fracturing, shooting or acidizing,
75 but excluding cleaning out, bailing or workover operations;

76 (v) "Well" means any shaft or hole sunk, drilled, bored
77 or dug into the earth or into underground strata for the
78 extraction or injection or placement of any liquid or gas, or
79 any shaft or hole sunk or used in conjunction with such
80 extraction or injection or placement. The term "well" does
81 not include any shaft or hole sunk, drilled, bored or dug
82 into the earth for the sole purpose of core drilling or pumping
83 or extracting therefrom potable, fresh or usable water for
84 household, domestic, industrial, agricultural or public use;
85 and

86 (w) "Well operator" or "operator" means any person or
87 persons, firm, partnership, partnership associaticn or cor-
88 poration that proposes to or does locate, drill, operate or
89 abandon any well as herein defined.

**§22-4-1k. Permits required; application for permit; information;
responsible agent; drilling permit number; when per-
mits not to be issued; penalty.**

1 It shall be unlawful for any well to be drilled, redrilled,
2 deepened, fractured, stimulated, plugged, pressured, converted,
3 combined or physically changed to allow the migration of fluid
4 from one formation to another unless a permit therefor has

5 been issued by the department. An application for any such
6 permit shall be filed with the deputy director and shall contain
7 the following:

8 (a) The name and address of the well operator;

9 (b) The name and address of the owner of the surface
10 lands upon which the well is or may be located;

11 (c) The name and address of every coal operator operating
12 coal seams under the tract of land on which the well is or may
13 be located, and the coal seam owner of record and lessee of
14 record required to be given notice by section two, if any, if said
15 owner or lessee is not yet operating said coal seams;

16 (d) The name and address of the agent of the well opera-
17 tor, if any such agent is required to be designated under the
18 provisions of this section;

19 (e) The approximate depth to which the well is to be
20 drilled;

21 (f) The proposed casing program of such well including
22 the sizes of all such casing, the depth to which all casing is to
23 be run and the extent to which such casing is to be cemented;

24 (g) The proposed method of reclamation which shall com-
25 ply with the requirements of section twelve-b of this article;
26 and

27 (h) Any other information which the deputy director by
28 rule or regulation may require.

29 If the well operator named in such application is a corpora-
30 tion, partnership or a nonresident of the state of West Vir-
31 ginia, then there shall be designated the name and address of
32 an agent for such operator who shall be the attorney-in-fact
33 for the operator and who shall be a resident of the state of
34 West Virginia upon whom notices, orders or other communi-
35 cations issued pursuant to this article or article five-a, chapter
36 twenty, may be served, and upon whom process may be served.
37 Every well operator required to designate an agent under this
38 section shall within five days after the termination of such
39 designation notify the department of such termination and
40 designate a new agent.

41 The well owner or operator shall install the permit number
42 as issued by the deputy director in a legible and permanent
43 manner to the well upon completion of any permitted work.
44 The dimensions, specifications and manner of installation
45 shall be in accordance with the administrative rules and reg-
46 ulations of the department.

47 For the purpose of ascertaining whether or not issuance of
48 any permit to drill, redrill, deepen, case, fracture, stimulate,
49 pressure, operate, plug, abandon, convert or combine any
50 well, or physically change any well or allow the migration of
51 fluid from one formation to another, will contribute to an
52 existing pollution problem, the deputy director shall have the
53 right and it shall be his duty to consult with the director
54 of the department of natural resources. In the event the
55 issuance of any such permit may reasonably be expected to
56 contribute to any such existing pollution then the deputy
57 director will not issue such permit.

58 Any person who violates any provision of this section shall
59 be guilty of a misdemeanor, and, upon conviction thereof,
60 shall be punished by a fine not exceeding two thousand dol-
61 lars, or imprisonment in jail for not exceeding twelve months,
62 or both such fine and imprisonment.

**§22-4-2. Plats prerequisite to drilling or fracturing wells; prepara-
tion and contents; notice and information furnished to
coal operators, owners or lessees; issuance of permits;
performance bonds or securities in lieu thereof; bond
forfeiture.**

1 Before drilling for oil or gas, or before fracturing or
2 stimulating a well on any tract of land, the well operator
3 shall have a plat prepared by a licensed land surveyor or
4 registered engineer showing the district and county in which
5 the tract of land is located, the name and acreage of the
6 same, the names of the owners of adjacent tracts, the pro-
7 posed or actual location of the well determined by survey,
8 the courses and distances of such location from two permanent
9 points or landmarks on said tract and the number to be given
10 the well and the date of drilling completion of a well when
11 it is proposed that such well be fractured and shall forward by
12 registered or certified mail a copy of the plat to the depart-

13 ment of mines. In the event the tract of land on which the said
14 well proposed to be drilled or fractured is located is known to
15 be underlaid with one or more coal seams, copies of the plat
16 shall be forwarded by registered or certified mail to each and
17 every coal operator operating said coal seams beneath said
18 tract of land, who has mapped the same and filed his maps
19 with the department in accordance with article two of this
20 chapter, and the coal seam owner of record and lessee of
21 record, if any, if said owner or lessee has recorded the dec-
22 laration provided in section twenty of this article, and if said
23 owner or lessee is not yet operating said coal seams beneath
24 said tract of land. With each of such plats there shall be en-
25 closed a notice (form for which shall be furnished on re-
26 quest by the department of mines) addressed to the de-
27 partment of mines and to each such coal operator, owner and
28 lessee, if any, at their respective addresses, informing them
29 that such plat and notice are being mailed to them respec-
30 tively by registered or certified mail, pursuant to the require-
31 ments of this article. If no objections are made, or are
32 found by the department, to such proposed location or pro-
33 posed fracturing within fifteen days from receipt of such plat
34 and notice by the department of mines, the same shall be
35 filed and become a permanent record of such location or
36 fracturing subject to inspection at any time by any interested
37 person, and the department may forthwith issue to the well
38 operator a permit reciting the filing of such plat, that no
39 objections have been made by the coal operators, owners
40 and lessees, if any, or found thereto by the department, and
41 authorizing the well operator to drill at such location, or to
42 fracture the well. Unless the department has objections to
43 such proposed location or proposed fracturing or stimulating,
44 such permit may be issued prior to the expiration of such
45 fifteen-day period upon the obtaining by the well operator
46 of the consent in writing of the coal operator or operators,
47 owners and lessees, if any, to whom copies of the plat and
48 notice shall have been mailed as herein required, and upon
49 presentation of such written consent to the department. The
50 notice above provided for may be given to the coal operator
51 by delivering or mailing it by registered or certified mail
52 as above to any agent or superintendent in actual charge of
53 mines.

54 A permit to drill, or to fracture or stimulate an oil or gas
55 well, shall not be issued unless the application therefor is
56 accompanied by a bond of the operator in the sum of two
57 thousand five hundred dollars, payable to the state of West
58 Virginia, with a corporate bonding or surety company autho-
59 rized to do business in this state as surety thereon, conditioned
60 on full compliance with all laws, rules and regulations relating
61 to the drilling, redrilling, deepening, casing, plugging, aban-
62 donment and reclamation of wells and for furnishing such
63 reports and information as may be required by the department:
64 *Provided*, That when such operator makes or has made ap-
65 plication for permits to drill a number of wells or fracture or
66 stimulate a well or wells the operator may in lieu of furnishing
67 a separate bond furnish a blanket bond in the sum of fifteen
68 thousand dollars, payable to the state of West Virginia, with
69 a corporate bonding or surety company authorized to do
70 business in this state as surety thereon, and conditioned as
71 aforesaid: *Provided, however*, That in lieu of corporate surety
72 on a separate or blanket bond, as the case may be, the
73 operator may elect to deposit with the deputy director for
74 oil and gas cash or the following collateral securities or any
75 combination thereof: (1) Bonds of the United States or
76 agency thereof, or those guaranteed by, or for which the
77 credit of the United States or agency therefor is pledged for
78 the payment of the principal and interest thereof; (2) direct
79 general obligation bonds of this state, or any other state,
80 or territory of the United States, or the District of Columbia,
81 unconditionally guaranteed as to the principal and interest
82 by such other state or territory of the United States, or the
83 District of Columbia if such other state, territory, or the
84 District of Columbia has the power to levy taxes for the
85 payment of the principal and interest of such securities, and
86 if at the time of the deposit such other state, territory, or the
87 District of Columbia is not in default in the payment of any
88 part of the principal or interest owing by it upon any part
89 of its funded indebtedness; (3) direct general obligation
90 bonds of any county, district, city, town, village, school
91 district or other political subdivision of this state issued
92 pursuant to law and payable from ad valorem taxes levied
93 on all the taxable property located herein, that the total

94 indebtedness after deducting sinking funds and all debts
95 incurred for self-sustaining public works does not exceed five
96 percent of the assessed value of all taxable property therein
97 at the time of the last assessment made before the date of
98 such deposit, and that the issuer has not, within five years
99 prior to the making thereof, been in default for more than
100 ninety days in the payment of any part of the principal or
101 interest on any debt, evidenced by its bonds; (4) revenue
102 bonds issued by this state or any agency of this state when
103 such bonds are payable from revenues or earnings specifically
104 pledged for the payment of principal and interest, and a
105 lawful sinking fund or reserve fund has been established
106 and is being maintained for the payment of such bonds; (5)
107 revenue bonds issued by a municipality in this state for the
108 acquisition, construction, improvement or extension of a
109 waterworks system, or a sewerage system, or a combined
110 waterworks and sewerage system, when such bonds are pay-
111 able from revenue or earnings specifically pledged for the
112 payment of principal and interest, and a lawful sinking fund
113 or reserve fund has been established and is being maintained
114 for the payment of such bonds; (6) revenue bonds issued
115 by a public service board of a public service district in this
116 state for the acquisition, construction, improvement or exten-
117 sion of any public service properties, or for the reimbursement
118 or payment of the costs and expenses of creating the district,
119 when such bonds are payable from revenue or earnings
120 specifically pledged for the payment of principal and interest,
121 and a lawful sinking fund or reserve fund has been established
122 and is being maintained for the payment of such bonds; (7)
123 revenue bonds issued by a board of trustees of a sanitary
124 district in this state for the corporate purposes of such district,
125 when such bonds are payable from revenue or earnings
126 specifically pledged for the payment of principal and interest,
127 and a lawful sinking fund or reserve fund has been estab-
128 lished and is being maintained for the payment of such bonds;
129 and (8) bonds issued by a federal land bank or home owners'
130 loan corporation. The cash deposit or market value, or
131 both, of the collateral securities shall be equal to or greater
132 than the penalty of the separate or blanket bond, as the
133 case may be. Upon receipt of any such deposit or cash or

134 collateral securities, the deputy director for oil and gas
135 shall immediately deliver the same to the treasurer of the
136 state of West Virginia. The treasurer shall determine whether
137 any such securities satisfy the requirements of this section.
138 If the securities are approved they shall be accepted by the
139 treasurer. If the securities are not approved, they shall be
140 rejected and returned to the operator and no permit shall
141 be issued until a corporate surety bond is filed or cash or
142 proper collateral securities are filed in lieu of such surety.
143 The treasurer shall hold any cash or securities in the name
144 of the state in trust for the purposes for which the deposit
145 was made. The operator shall be entitled to all interest and
146 income earned on the collateral securities filed by such oper-
147 ator so long as the operator is in full compliance with all laws,
148 rules and regulations relating to the drilling, redrilling,
149 deepening, casing, plugging, abandonment and reclamation
150 of wells and for furnishing such reports and information as
151 may be required by the department. The operator making the
152 deposit shall be entitled from time to time to receive from
153 the treasurer, upon the written order of the deputy director
154 for oil and gas, the whole or any portion of such securities
155 upon depositing with the treasurer in lieu thereof cash equal
156 to or greater than the penalty of the bond, in other approved
157 securities of the classes herein specified having a market
158 value equal to or greater than the penalty of the bond, or
159 a corporate surety bond.

160 When an operator has furnished a separate bond from a
161 corporate bonding or surety company to drill, fracture or
162 stimulate an oil or gas well and the well produces oil or
163 gas, or both, its operator may deposit with the deputy director
164 for oil and gas cash from the sale of the oil or gas, or both,
165 until the total deposited is two thousand five hundred dollars.
166 When the sum of the cash deposited is two thousand five
167 hundred dollars, the separate bond for the well shall be
168 released by the department. Upon receipt of such cash, the
169 deputy director for oil and gas shall immediately deliver the
170 same to the treasurer of the state of West Virginia. The
171 treasurer shall hold such cash in the name of the state in
172 trust for the purpose for which the bond was furnished and
173 the deposit was made. The operator shall be entitled to all

174 interest and income which may be earned on the cash de-
175 posited so long as the operator is in full compliance with all
176 laws, rules and regulations relating to the drilling, redrilling,
177 deepening, casing, plugging, abandonment and reclamation of
178 the well for which the cash was deposited and so long as he
179 has furnished all reports and information as may be required
180 by the department. If the cash realized from the sale of oil
181 or gas, or both, from the well is not sufficient for the operator
182 to deposit with the deputy director for oil and gas the sum
183 of two thousand five hundred dollars within one year of the
184 day the well started producing, the corporate or surety com-
185 pany which issued the bond on the well may notify the
186 operator and the department of its intent to terminate its
187 liability under its bond. The operator then shall have thirty
188 days to furnish a new bond from a corporate bonding or
189 surety company or collateral securities, as provided in the
190 next preceding paragraph of this section, with the department.
191 If a new bond or collateral securities are furnished by the
192 operator, the liability of the corporate bonding or surety
193 company under the original bond shall terminate as to any
194 acts and operations of the operator occurring after the effec-
195 tive date of the new bond or the date the collateral securities
196 are accepted by the treasurer of the state of West Virginia.
197 If the operator does not furnish a new bond or collateral
198 securities, as provided in the next preceding paragraph of
199 this section, with the department, he shall immediately plug,
200 fill and reclaim the well in accordance with all of the pro-
201 visions of law, rules and regulations applicable thereto. In
202 such case, the corporate or surety company which issued the
203 original bond shall be liable for any plugging, filling or
204 reclamation not performed in accordance with such laws,
205 rules and regulations.

206 Any such bond shall remain in force until released by the
207 department and the department shall release the same when
208 it is satisfied the conditions thereof have been fully performed.
209 Upon the release of any such bond, any cash or collateral
210 securities deposited shall be returned by the deputy director
211 for oil and gas to the operator who deposited same.

212 If any of the requirements of this article or rules and
213 regulations promulgated pursuant thereto or the orders of

214 the deputy director for oil and gas have not been complied
215 with within the time limit set by the violation notice as
216 defined in sections one-g, one-h and one-i, article four, chapter
217 twenty-two of this code the performance bond shall then
218 be forfeited.

219 When any bond is forfeited pursuant to the provisions of
220 this article or rules and regulations promulgated pursuant
221 thereto the deputy director shall give notice to the attorney
222 general who shall collect the forfeiture without delay.

223 All forfeitures shall be deposited in the treasury of the
224 state of West Virginia in the special reclamation fund as
225 defined in section twelve-a, article four, chapter twenty-two
226 of this code.

§22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

1 Before fracturing any well the well operator shall, by regis-
2 tered or certified mail, forward a notice of intention to frac-
3 ture such well to the department of mines and to each and
4 every coal operator operating coal seams beneath said tract
5 of land, who has mapped the same and filed his maps with the
6 department in accordance with article two of this chapter,
7 and the coal seam owner and lessee, if any, if said owner of
8 record or lessee of record has recorded the declaration pro-
9 vided in section twenty of this article, and if said owner or
10 lessee is not yet operating said coal seams beneath said tract
11 of land.

12 The notice shall be addressed to the department of mines
13 and to each such coal operator at their respective addresses,
14 shall contain the number of the drilling permit for such
15 well and such other information as may be required by the
16 department to enable the department and the coal operators
17 to locate and identify such well and shall inform them that
18 such notice is being mailed to them, respectively, by registered
19 or certified mail, pursuant to the requirements of this article.
20 (The form for such notice of intention shall be furnished on re-
21 quest by the department of mines.) If no objections are made,
22 or are found by the department, to such proposed fracturing

23 within fifteen days from receipt of such notice by the depart-
24 ment of mines, the same shall be filed and become a permanent
25 record of such fracturing, subject to inspection at any time
26 by any interested person, and the department shall forthwith
27 issue to the well operator a permit reciting the filing of such
28 notice, that no objections have been made by the coal opera-
29 tors, or found thereto by the department, and authorizing
30 the well operator to fracture such well. Unless the depart-
31 ment has objections to such proposed fracturing, such permit
32 shall be issued prior to the expiration of such fifteen-day period
33 upon the obtaining by the well operator of the consent in
34 writing of the coal operator or operators, owners or lessees,
35 if any, to whom notice of intention to fracture shall have been
36 mailed as herein required, and upon presentation of such
37 written consent to the department. The notice above provided
38 for may be given to the coal operator by delivering or mailing
39 it by registered or certified mail as above to any agent or
40 superintendent in actual charge of mines.

§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.

1 Before drilling a well for the introduction of liquids for the
2 purposes provided for in section ten-a of this article or for the
3 introduction of liquids for the disposal of sewage, industrial
4 waste or other waste or the effluent therefrom on any tract
5 of land, or before converting an existing well for such purposes,
6 the well operator shall have a plat prepared by a registered
7 engineer or licensed land surveyor showing the district and
8 county in which the tract of land is located, the name and
9 acreage of the same, the names of the owners of all adjacent
10 tracts, the proposed or actual location of the well or wells
11 determined by a survey, the courses and distances of such
12 location from two permanent points of land marked on said
13 tract and the number to be given to the well, and shall for-
14 ward by registered or certified mail the original and one copy
15 of the plat to the department of mines. In addition, the well
16 operator shall provide the following information on the plat or

17 by way of attachment thereto to the department in the manner
18 and form prescribed by the department's rules and regulations:
19 (a) The location of all wells, abandoned or otherwise located
20 within the area to be affected; (b) where available, the casing
21 records of all such wells; (c) where available, the drilling log
22 of all such wells; (d) the maximum pressure to be introduced;
23 (e) the geological formation into which such liquid or pressure
24 is to be introduced; (f) a general description of the liquids to
25 be introduced; (g) the location of all water-bearing horizons
26 above and below the geological formation into which such
27 pressure, liquid or waste is to be introduced; and (h) such
28 other information as the deputy director by rule and regula-
29 tion may require.

30 In the event the tract of land on which said well proposed
31 to be drilled or converted for the purposes provided for in this
32 section is located is known to be underlaid with coal seams,
33 copies of the plat and all information required by this section
34 shall be forwarded by the operator by registered or certified
35 mail to each and every coal operator operating coal seams be-
36 neath said tract of land, who has mapped the same and filed
37 his maps with the department in accordance with article two
38 of this chapter, and the coal seam owner of record and lessee
39 of record, if any, if said owner or lessee has recorded the dec-
40 laration provided in section twenty of this article, and if said
41 owner or lessee is not yet operating said seams beneath said
42 tract of land. With each of such plats, there shall be enclosed a
43 notice (form for which shall be furnished on request by the
44 department of mines) addressed to the department of mines
45 and to each such coal operator, owner or lessee, if any, at
46 their respective addresses, informing them that such plat and
47 notice are being mailed to them, respectively, by registered or
48 certified mail, pursuant to the requirements of this section. The
49 deputy director shall forward a copy of the plat, notice and all
50 other information required by this section to the chief of the
51 division of water resources of the department of natural re-
52 sources.

53 If no objections are made by any such coal operator, owner,
54 lessee or such chief, or are found by the department to such
55 proposed drilling or converting of the well or wells for the

56 purposes provided for in this section within thirty days from
57 the receipt of such plat and notice by the department of mines,
58 the same shall be filed and become a permanent record of such
59 location or well, subject to inspection at any time by any
60 interested person, and the department shall forthwith issue to
61 the well operator a permit reciting the filing of such plat and
62 notice, that no objections have been made by the coal opera-
63 tors, owners and lessees, if any, or found thereto by the de-
64 partment of mines or by the chief, and authorizing the well
65 operator to drill at such location or convert such existing well
66 or wells for the purposes provided for in this section. Such
67 permit shall be issued prior to the expiration of such thirty-
68 day period upon the obtaining by the well operator, of the
69 consent in writing of the coal operator, owners and lessees,
70 if any, to whom copies of the plat and notice must have been
71 mailed as herein required and upon obtaining the consent in
72 writing of the chief, and upon presentation of such written
73 consent in writing of the chief, and upon presentation of such
74 written consent to the department. The notice above provided
75 for may be given to the coal operator by delivering or mailing
76 it by registered or certified mail as above to any agent or su-
77 perintendent in actual charge of the mines.

78 A permit to drill a well or wells or convert an existing well or
79 wells for the purposes provided for in this section shall not be
80 issued until all of the bonding provisions required by the pro-
81 visions of section two of this article have been fully complied
82 with and all such bonding provisions shall apply to all wells
83 drilled or converted for the purposes provided for in this section
84 as if such wells had been drilled for the purposes provided for
85 in section two of this article, except that such bonds shall be
86 conditioned upon full compliance with all laws, rules and
87 regulations relating to the drilling of a well or the converting
88 of an existing well for the purposes provided for in said section
89 ten-a, or introducing of liquids for the disposal of sewage, in-
90 dustrial waste or other waste or the effluent therefrom includ-
91 ing the redrilling, deepening, casing, plugging or abandonment
92 of all such wells.

§22-4-3. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.

1 When a proposed deep well drilling site or oil well drilling
2 site or any fracturing site is above a seam or seams of coal,
3 then the coal operator operating said coal seams beneath the
4 tract of land, or the coal seam owner or lessee, if any, if said
5 owner or lessee is not yet operating said coal seams, may
6 within fifteen days from the receipt by the department of the
7 plat and notice required by section two of this article, or with-
8 in fifteen days from the receipt by the department of notice
9 required by section two-a of this article, file objections in
10 writing (forms for which will be furnished by the department
11 on request) to such proposed drilling or fracturing with the
12 department, setting out therein as definitely as is reasonably
13 possible the ground or grounds on which such objections are
14 based.

15 If any objection is filed, or if any objection is made by the
16 department, the department shall notify the well operator of
17 the character of the objections and by whom made and fix a
18 time and place, not less than fifteen days from the end of said
19 fifteen-day period, at which such objections will be considered
20 of which time and place the well operator and all objecting
21 coal operators, owners or lessees, if any, shall be given at
22 least ten days' written notice by the department, by registered
23 or certified mail, and summoned to appear. At the time and
24 place so fixed the well operator and the objecting coal opera-
25 tors, owners or lessees, if any, or such of them as are present
26 or represented, shall proceed to consider the objections. In the
27 case of proposed drilling, such parties present or represented
28 may agree upon either the location as made or so moved as to
29 satisfy all objections and meet the approval of the department,
30 and any change in the original location so agreed upon and
31 approved by the department shall be indicated on said plat on
32 file with the department, and the distance and direction of
33 the new location from the original location shall be shown,
34 and as so altered, the plat shall be filed and become a perma-
35 nent record, and in the case of proposed fracturing, such par-

36 ties present or represented may agree upon conditions under
37 which the well is to be fractured which will protect life and
38 property and which will satisfy all objections and meet the
39 approval of the department, at which time the plat and notice
40 required by section two or the notice required by section two-a
41 as the case may be, shall be filed and become a permanent
42 record. Whereupon the department shall forthwith issue to
43 the well operator a drilling or fracturing permit, as the case
44 may be, reciting the filing of the plat and notice required by
45 said section two, or the notice required by said section two-a,
46 as the case may be, that at a hearing duly held a location as
47 shown on the plat or the conditions under which the fractur-
48 ing is to take place for the protection of life and property were
49 agreed upon and approved, and that the well operator is
50 authorized to drill at such location or to fracture at the site
51 shown on such plat, or to fracture the well identified in the
52 notice required by section two-a, as the case may be.

53 (a) In the event the well operator and the objecting coal
54 operators, owners or lessees, if any, or such as are present or
55 represented at such hearing are unable to agree upon a drill-
56 ing location, or upon a drilling location that meets the approv-
57 al of the department of mines, then the department shall pro-
58 ceed to hear the evidence and testimony in accordance with
59 sections one and two, article five, chapter twenty-nine-a of
60 this code, except where such provisions are inconsistent with
61 this article. The department shall take into consideration in
62 arriving at its decision:

63 (1) Whether the drilling location is above or in close
64 proximity to any mine opening or shaft, entry, travelway, air-
65 way, haulageway, drainageway or passageway, or to any pro-
66 posed extension thereof, in any operated or abandoned or
67 operating coal mine, or coal mines already surveyed and
68 platted, but not yet being operated;

69 (2) Whether the proposed drilling can reasonably be done
70 through an existing or planned pillar of coal, or in close prox-
71 imity to an existing well or such pillar of coal, taking into
72 consideration the surface topography;

73 (3) Whether a well can be drilled safely, taking into consid-

74 eration the dangers from creeps, squeezes or other distur-
75 bances due to the extraction of coal; and

76 (4) The extent to which the proposed drilling location
77 unreasonably interferes with the safe recovery of coal, oil and
78 gas.

79 At the close of the hearing or within ten days thereafter the
80 department shall issue an order stating:

81 (1) That it refuses to issue a permit;

82 (2) That it will issue a permit for the proposed drilling lo-
83 cation;

84 (3) That it will issue a permit for a drilling location differ-
85 ent from that requested by the well operator.

86 The order shall state with particularity the reasons for the
87 department's order and shall be mailed by registered or certi-
88 fied mail to the parties present or represented at such hearing.
89 If the department has ruled that it will issue a permit, it shall
90 issue a permit effective ten days after it has mailed such
91 order, except that for good cause shown, the department may
92 stay the issuance of a permit for a period not to exceed thirty
93 days.

94 If a permit is issued, the department shall indicate the **new**
95 drilling location on the plat on file and shall number and keep
96 an index of and docket each plat and notice mailed to it as
97 provided in section two of this article, and each notice mailed
98 to it as provided in section two-a of this article, entering in
99 such docket the name of the well operator, and the names and
100 addresses of all persons notified, the dates of hearings and all
101 actions taken by the department. The department shall also
102 prepare a record of the proceedings, which record shall include
103 all applications, plats and other documents filed with the de-
104 partment, all notices given and proof of service thereof, all
105 orders issued, all permits issued and a transcript of the hear-
106 ing. The record prepared by the department shall be open
107 to inspection by the public.

108 (b) In the event the well operator and the objecting coal
109 operators, owners or lessees, if any, or such as are present or

110 represented at such hearing, are unable to agree upon the
111 conditions under which the well is to be fractured as to protect
112 life and property, or upon conditions of fracturing that meet
113 with the approval of the department, then the department shall
114 proceed to hear the evidence and testimony in accordance with
115 sections one and two, article five, chapter twenty-nine-a of this
116 code, except where such provisions are inconsistent with this
117 article.

118 The department shall take into consideration upon its de-
119 cision whether the well can be fractured safely, taking into
120 consideration the dangers from creeps, squeezes or other
121 disturbances.

122 At the close of the hearing, or within ten days thereafter, the
123 department shall issue an order stating the conditions under
124 which the well is to be fractured, provided the well can be
125 fractured safely, taking into consideration the dangers from
126 creeps, squeezes or other disturbances. If such fracturing can-
127 not be done safely, the department shall issue an order stating
128 with particularity the reasons for refusing to issue a permit.

129 The order shall state with particularity the reasons for the
130 department's order and shall be mailed by registered or certi-
131 fied mail to the parties present or represented at such hearing.
132 If the department has ruled that it will issue a permit, it shall
133 issue a permit effective ten days after it has mailed such
134 order, except that for good cause shown, the department may
135 stay the issuance of a permit for a period not to exceed thirty
136 days.

137 If a permit is issued, the department shall indicate the well
138 to be fractured on the plat on file and shall number and keep
139 an index of and docket each plat and notice mailed to it as
140 provided in section two of this article, and each notice mailed
141 to it as provided in section two-a of this article, entering in
142 such docket the name of the well operator, the names and
143 addresses of all persons notified, the dates of hearings and all
144 actions taken by the department. The department shall also
145 prepare a record of the proceedings, which record shall in-
146 clude all applications, plats and other documents filed with
147 the department, all notices given and proof of service thereof,

148 all orders issued, all permits issued and a transcript of the
149 hearing. The record prepared by the department shall be open
150 to inspection by the public.

**§22-4-3b. Objections to proposed drilling of shallow gas wells;
notice to chairman of review board; indication of
changes on plats; issuance of permits.**

1 When a proposed shallow well drilling site is above a seam
2 or seams of coal, then the owner of any such coal seam may,
3 within fifteen days from the receipt by the department of
4 the plat and notice required by section two of this article,
5 file objections in writing (forms for which will be furnished
6 by the department on request) to such proposed drilling
7 with the department, setting out therein as definitely as is
8 reasonably possible the ground or grounds on which such
9 objections are based.

10 If any such objection is filed, or if any objection is made
11 by the department, the deputy director shall forthwith mail,
12 by registered or certified mail, to the chairman of the review
13 board, a notice that an objection to the proposed drilling
14 or deepening of a shallow well has been filed with the
15 department, and shall enclose in such notice a copy of all
16 objections filed with or made by the department and a copy
17 of the application and plat filed with the department in ac-
18 cordance with the provisions of section two of this article.

19 Thereafter, no further action shall be taken on such appli-
20 cation by the department until the department receives an
21 order from the review board directing the department to:

22 (1) Refuse a drilling permit; or

23 (2) Issue a drilling permit for the proposed drilling loca-
24 tion; or

25 (3) Issue a drilling permit for an alternate drilling loca-
26 tion different from that requested by the well operator; or

27 (4) Issue a drilling permit either for the proposed drilling
28 location or for an alternate drilling location different from
29 that requested by the well operator, but not allow the drilling

30 of the well for a period of not more than one year from the
31 date of issuance of such permit.

32 Upon receipt of such order, the department shall promptly
33 undertake the action directed by the review board, except that
34 the department shall not issue a drilling permit unless all
35 other provisions of this article (except section three) pertaining
36 to the application for and approval of a drilling permit have
37 been complied with. All permits issued by the department
38 pursuant to this section shall be effective ten days after
39 issuance unless the review board orders the department to
40 stay the effectiveness of a permit for a period not to exceed
41 thirty days from the date of issuance.

42 If a permit is issued, the department shall indicate the
43 approved drilling location on the plat filed with the department
44 in accordance with the provisions of section two of this article
45 and shall number and keep an index of and docket each
46 plat and notice mailed to it as provided in section two of
47 this article, and each notice mailed to it as provided in
48 section two-a of this article, entering in such docket the
49 name of the well operator, and the names and addresses of all
50 persons notified, the dates of conferences, hearings and all
51 other actions taken by the department and the review board.
52 The department shall also prepare a record of the proceed-
53 ings, which record shall include all applications, plats and
54 other documents filed with the department, all notices given
55 and proof of service thereof, all orders issued, all permits
56 issued and a transcript of the hearing. The record prepared
57 by the department shall be open to inspection by the public.

§22-4-3c. Applicability.

1 The provisions of this act affecting applications for per-
2 mits to drill shallow gas wells shall only apply to such applica-
3 tions filed after 12:01 a.m., August first, one thousand nine
4 hundred seventy-eight, and the provisions of this article
5 affecting such applications which were in effect immediately
6 prior to the effective date of this act shall apply to all such
7 applications filed prior to 12:01 a.m., August first, one
8 thousand nine hundred seventy-eight, with like effect as if
9 this act had not been enacted.

§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

1 Any party to proceedings under section three or section
2 three-b of this article or section seven, article four-b of this
3 chapter, adversely affected by the issuance of a drilling permit,
4 or to the issuance of a fracturing permit or the refusal of the
5 department to grant a drilling permit or fracturing permit,
6 is entitled to judicial review thereof. All of the pertinent
7 provisions of section four, article five, chapter twenty-nine-a
8 of this code shall apply to and govern such judicial review
9 with like effect as if the provisions of said section four were
10 set forth in extenso in this section.

11 The judgment of the circuit court shall be final unless
12 reversed, vacated or modified on appeal to the supreme court
13 of appeals in accordance with the provisions of section one,
14 article six, chapter twenty-nine-a of this code.

§22-4-5. Protective devices; when well penetrates workable coal bed.

1 When a well penetrates one or more workable coal beds,
2 the well operator shall run and cement a string of casing in
3 the hole through the workable coal bed or beds in such a
4 manner as will exclude all oil, gas or gas pressure from the
5 coal bed or beds, except such oil, gas or gas pressure as may
6 be found in such coal bed or beds. Such string of casing shall
7 be run to a point at least thirty feet below the lowest workable
8 coal bed which the well penetrates and shall be circulated
9 and cemented from such point to the surface in such a
10 manner as provided for in reasonable rules and regulations
11 promulgated by the director of the department in accordance
12 with the provisions of chapter twenty-nine-a. After any such
13 string of casing has been so run and cemented to the surface,
14 drilling may proceed to the permitted depth.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lien thereof; affidavit showing time and manner.

1 All dry or abandoned wells or wells presumed to be
2 abandoned under the provisions of section seven of this article

3 shall be plugged and reclaimed in accordance with this section
4 and the other provisions of this article and in accordance with
5 the rules and regulations promulgated by the deputy director.

6 Prior to the commencement of plugging operations and the
7 abandonment of any well, the well operator shall either (a)
8 notify, by registered or certified mail, the department of
9 mines and the coal operator operating coal seams, the coal
10 seam owner of record or lessee of record, if any, to whom
11 notices are required to be given by section two of this article,
12 and the coal operators to whom notices are required to be
13 given by section two-a of this article, of its intention to plug
14 and abandon any such well (using such form of notice as the
15 department may provide), giving the number of the well and
16 its location and fixing the time at which the work of plugging
17 and filling will be commenced, which time shall be not less
18 than five days after the day on which such notice so mailed
19 is received or in due course should be received by the depart-
20 ment of mines, in order that a representative or representatives
21 of the department and such coal operator, owner or lessee,
22 if any, may be present at the plugging and filling of the well:
23 *Provided*, That whether such representatives appear or do
24 not appear, the well operator may proceed at the time fixed
25 to plug and fill the well in the manner hereinafter described,
26 or (b) first obtain the written approval of the department of
27 mines and such coal operator, owner or lessee, if any, or
28 (c) in the event the well to be plugged and abandoned is
29 one on which drilling or reworking operations have been
30 continuously progressing pursuant to authorization granted
31 by the department, first obtain the verbal permission of the
32 deputy director for oil and gas or his designated representative
33 to plug and abandon such well, except that the well operator
34 shall, within a reasonable period not to exceed five days
35 after the commencement of such plugging operations, give the
36 written notices required by subdivision (a) above.

37 No well shall be plugged or abandoned unless prior to the
38 commencement of plugging operations and the abandonment
39 of any well the department is furnished a bond of the operator
40 in the sum of two thousand five hundred dollars, payable to
41 the state of West Virginia, with a corporate bonding or

42 surety company authorized to do business in this state as
43 surety thereon, conditioned on full compliance with all laws,
44 rules and regulations relating to the casing, plugging, abandon-
45 ment and reclamation of wells and for furnishing such reports
46 and information as may be required by the department. When
47 a number of wells are involved, the operator may in lieu of
48 furnishing a separate bond furnish a blanket bond in the
49 sum of fifteen thousand dollars, payable to the state of
50 West Virginia, with a corporate bonding or surety company
51 authorized to do business in this state as surety thereon, and
52 conditioned as aforesaid. In lieu of corporate surety on a
53 separate or blanket bond, as the case may be, the operator
54 may elect to deposit with the deputy director for oil and
55 gas cash or collateral securities as specified in section two
56 of this article. All of the provisions of section two dealing
57 with cash or collateral securities in lieu of corporate surety
58 shall be fully applicable hereto except for the condition of
59 the bond with respect to which the operator must be in full
60 compliance in order to be entitled to the interest and income
61 earned on such securities. The operator shall be entitled to
62 such interest and income under this section so long as the
63 operator is in full compliance with all laws, rules and regula-
64 tions relating to the casing, plugging, abandonment and
65 reclamation of wells and for furnishing such reports and
66 information as may be required by the department. Any
67 such bond shall remain in force until released by the depart-
68 ment and the department shall release the same when it is
69 satisfied the conditions thereof have been fully performed.
70 Notwithstanding the foregoing provisions, any operator who,
71 in accordance with section two of this article, has furnished
72 a separate bond, which has not been released by the de-
73 partment, for the drilling, converting or drilling for the
74 introduction of liquids, for the disposal of sewage, industrial
75 waste or other waste or the effluent therefrom, or introducing
76 pressure, whether liquid or gas, or introducing liquid for the
77 purposes provided for in section ten-a of this article or
78 fracturing of the well it is now proposed be plugged and
79 abandoned, or who, in accordance with the provisions of said
80 section two of this article, has furnished a blanket bond which
81 has not been released by the department shall not be required

82 by this section to furnish any other bond. When the plugging,
83 filling and reclamation of a well have been completed, an
84 affidavit, in triplicate, shall be made (on a form to be fur-
85 nished by the department) by two experienced men who
86 participated in the work, the deputy director for oil and gas
87 or his designated representative, in which affidavit shall be
88 set forth the time and manner in which the well was plugged
89 and filled and the land reclaimed. One copy of this affidavit
90 shall be retained by the well operator, another (or true copies
91 of same) shall be mailed to the coal operator or operators,
92 if any, and the third to the department of mines.

§22-4-10. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any
2 well drilled for natural gas or petroleum, or drilled or con-
3 verted for the introduction of pressure, whether liquid or gas,
4 or for the introduction of liquid for the purposes provided for
5 in section ten-a of this article or for the disposal of sewage,
6 industrial waste or other waste or the effluent therefrom the
7 well operator, at the time of such abandonment or cessation,
8 shall fill and plug the well in the following manner:

9 (a) Where the well does not penetrate workable coal beds,
10 it shall either be filled with mud, clay or other nonporous ma-
11 terial from the bottom of the well to a point twenty feet above
12 the top of its lowest oil, gas or water-bearing stratum; or a
13 permanent bridge shall be anchored thirty feet below its lowest
14 oil, gas or water-bearing stratum, and from such bridge it
15 shall be filled with mud, clay or other nonporous material to
16 a point twenty feet above such stratum; at this point there
17 shall be placed a plug of cement or other suitable material
18 which will completely seal the hole. Between this sealing plug
19 and a point twenty feet above the next higher oil, gas or
20 water-bearing stratum, the hole shall be filled, in the man-
21 ner just described; and at such point there shall be placed
22 another plug of cement or other suitable material which
23 will completely seal the hole. In like manner the hole
24 shall be filled and plugged, with reference to each of its
25 oil, gas or water-bearing strata. However, whenever such
26 strata are not widely separated and are free from water,
27 they may be grouped and treated as a single sand, gas or

28 petroleum horizon, and the aforesaid filling and plugging
29 be performed as though there were but one horizon. After
30 the plugging of all oil, gas or water-bearing strata, as afore-
31 said, a final cement plug shall be placed approximately
32 ten feet below the bottom of the largest casing in the well;
33 from this point to the surface the well shall be filled with
34 mud, clay or other nonporous material. In case any of the oil
35 or gas-bearing strata in a well shall have been shot, thereby
36 creating cavities which cannot readily be filled in the manner
37 above described, the well operator shall follow either of the
38 following methods:

39 (1) Should the stratum which has been shot be the lowest
40 one in the well, there shall be placed, at the nearest suitable
41 point, but not less than twenty feet above the stratum, a plug
42 of cement or other suitable material which will completely
43 seal the hole. In the event, however, that the shooting has
44 been done above one or more oil or gas-bearing strata in the
45 well, plugging in the manner specified shall be done at the
46 nearest suitable point, but not less than twenty feet below and
47 above the stratum shot, or (2), when such cavity shall be in
48 the lowest oil or gas-bearing stratum in the well, a liner shall
49 be placed which shall extend from below the stratum to a
50 suitable point, but not less than twenty feet above the stratum
51 in which shooting has been done. In the event, however, that
52 the shooting has been done above one or more oil or gas-bear-
53 ing strata in the well, the liner shall be so placed that it will
54 extend not less than twenty feet above, nor less than twenty
55 feet below, the stratum in which shooting has been done. Fol-
56 lowing the placing of the liner in the manner here specified it
57 shall be compactly filled with cement, mud, clay or other
58 nonporous sealing material;

59 (b) Where the well penetrates one or more workable coal
60 beds and a coal protection string of casing has been circulated
61 and cemented in to the surface, the well shall be filled and
62 securely plugged in the manner provided in subsection (a) of
63 this section, except that expanding cement shall be used in-
64 stead of regular hydraulic cement, to a point approximately
65 one hundred feet below the bottom of the coal protection
66 string of casing. A one hundred foot plug of expanding cement

67 shall then be placed in the well so that the top of such plug is
68 located at a point just below the coal protection string of cas-
69 ing. After such plug has been securely placed in the well,
70 the coal protection string of casing shall be emptied of liquid
71 from the surface to a point one hundred feet below the lowest
72 workable coal bed or to the bottom of the coal protection
73 string of casing, whichever is shallower. A vent or other device
74 approved by the department shall then be installed on the top
75 of the coal protection string of casing in such a manner that
76 will prevent liquids and solids from entering the well but will
77 permit ready access to the full internal diameter of the coal
78 protection string of casing when required. The coal protection
79 string of casing and the vent or other device approved by the
80 department shall extend, when finally in place, a distance of no
81 less than thirty inches above ground level and shall be perma-
82 nently marked with the well number assigned by the depart-
83 ment.

84 (c) Where the well penetrates one or more workable coal
85 beds and a coal protection string of casing has not been cir-
86 culated and cemented in to the surface, the well shall be
87 filled and securely plugged in the manner provided in subsec-
88 tion (a) of this section to a point fifty feet below the lowest
89 workable coal bed. Thereafter, a plug of cement shall be
90 placed in the well at a point not less than forty feet below the
91 lowest workable coal bed. After the cement plug has been
92 securely placed in the well, the well shall be filled with cement
93 to a point twenty feet above the lowest workable coal bed.
94 From this point the well shall be filled with mud, clay or other
95 nonporous material to a point forty feet beneath the next
96 overlying workable coal bed, if such there be, and the well
97 shall then be filled with cement from this point to a point
98 twenty feet above such workable coal bed, and similarly, in
99 case there are more overlying workable coal beds. After the
100 filling and plugging of the well to a point above the highest
101 workable coal bed, filling and plugging of the well shall con-
102 tinue in the manner provided in subsection (a) of this section
103 to a point fifty feet below the surface, and a plug of cement
104 shall be installed from the point fifty feet below the surface to
105 the surface with a monument installed therein extending
106 thirty inches above ground level.

107 (d) (1) Where the well penetrates one or more workable
108 coal beds and a coal protection string of casing has not been
109 circulated and cemented in to the surface, a coal operator or
110 coal seam owner may request that the well be plugged in the
111 manner provided in subdivision (3) of this subsection rather
112 than by the method provided in subsection (c) of this section.
113 Such request (forms for which shall be provided by the de-
114 partment) must be filed in writing with the department prior
115 to the scheduled plugging of the well, and must include the
116 number of the well to be plugged and the name and address
117 of the well operator. At the time such request is filed with the
118 department, a copy of such request must also be mailed by
119 registered or certified mail to the well operator named in the
120 request.

121 (2) Upon receipt of such request, the department shall
122 issue an order staying the plugging of the well and shall prompt-
123 ly determine the cost of plugging the well in the manner pro-
124 vided in subdivision (3) of this subsection and the cost of
125 plugging the well in the manner provided in subsection (c) of
126 this section. In making such determination, the department
127 shall take into consideration any agreement previously made
128 between the well operator and the coal operator or coal seam
129 owner making the request. If the department determines that
130 the cost of plugging the well in the manner provided in sub-
131 section (c) of this section exceeds the cost of plugging the well
132 in the manner provided in subdivision (3) of this subsection,
133 the department shall grant the request of the coal operator
134 or owner and shall issue an order requiring the well operator to
135 plug the well in the manner provided in subdivision (3) of this
136 subsection. If the department determines that the cost of
137 plugging the well in the manner provided in subsection (c)
138 of this section is less than the cost of plugging the well in the
139 manner provided in subdivision (3) of this subsection, the
140 department shall request payment into escrow of the differ-
141 ence between the determined costs by the coal operator or
142 coal seam owner making the request. Upon receipt of satis-
143 factory notice of such payment, or upon receipt of notice that
144 the well operator has waived such payment, the department
145 shall grant the request of the coal operator or coal seam owner
146 and shall issue an order requiring the well operator to plug the

147 well in the manner provided in subdivision (3) of this sub-
148 section. If satisfactory notice of payment into escrow, or
149 notice that the well operator has waived such payment, is not
150 received by the department within fifteen days after the re-
151 quest for payment into escrow, the department shall issue an
152 order permitting the plugging of the well in the manner pro-
153 vided in subsection (c) of this section. Copies of all orders
154 issued by the department shall be sent by registered or certi-
155 fied mail to the coal operator or coal seam owner making the
156 request and to the well operator. When the escrow agent has
157 received certification from the department of the satisfactory
158 completion of the plugging work and the reimbursable extra
159 cost thereof (that is, the difference between the department's
160 determination of plugging cost in the manner provided in sub-
161 section (c) of this section and the well operator's actual
162 plugging cost in the manner provided in subdivision (3) of this
163 subsection), he shall pay the reimbursable sum to the well
164 operator or his nominee from the payment into escrow to the
165 extent available. The amount by which the payment into
166 escrow exceeds the reimbursable sum plus the escrow agent's
167 fee, if any, shall be repaid to the coal owner. If the amount
168 paid to the well operator or his nominee is less than the actual
169 reimbursable sum, the escrow agent shall inform the coal
170 owner, who shall pay the deficiency to the well operator or
171 his nominee within thirty days. If the coal operator breaches
172 this duty to pay the deficiency, the well operator shall have a
173 right of action and be entitled to recover damages as if for
174 wrongful conversion of personality, and his reasonable attor-
175 ney fees.

176 (3) Where a request of a coal operator or coal seam owner
177 filed pursuant to subdivision (1) of this subsection has been
178 granted by the department, the well shall be plugged in the
179 manner provided in subsection (a) of this section, except that
180 expanding cement shall be used instead of regular hydraulic
181 cement, to a point approximately two hundred feet below the
182 lowest workable coal bed. A one hundred foot plug of ex-
183 panding cement shall then be placed in the well beginning at
184 the point approximately two hundred feet below the lowest
185 workable coal bed and extending to a point approximately
186 one hundred feet below the lowest workable coal bed. A string

187 of casing with an outside diameter no less than four and one
188 half inches shall then be run into the well to a point approxi-
189 mately one hundred feet below the lowest workable coal bed
190 and such string of casing shall be circulated and cemented in
191 to the surface. The casing shall then be emptied of liquid from
192 a point approximately one hundred feet below the lowest work-
193 able coal bed to the surface, and a vent or other device ap-
194 proved by the department shall be installed on the top of the
195 string of casing in such a manner that it will prevent liquids and
196 solids from entering the well but will permit ready access to
197 the full internal diameter of the coal protection string of cas-
198 ing when required. The string of casing and the vent or other
199 device approved by the department shall extend, when finally
200 in place, a distance of no less than thirty inches above ground
201 level and shall be permanently marked with the well number
202 assigned by the department. Notwithstanding the foregoing
203 provisions of this subdivision, if under particular circum-
204 stances a different method of plugging is required to obtain the
205 approval of another governmental agency for the safe mining
206 through of said well, the department may approve such dif-
207 ferent method of plugging if it finds the same to be as safe
208 for mining through and otherwise adequate to prevent gas or
209 other fluid migration from the oil and gas reservoirs as the
210 method above specified.

211 (e) Any person may apply to the department for an order to
212 clean out and replug a previously plugged well in a manner
213 which will permit the safe mining through of such well. Such
214 application shall be filed with the department and shall con-
215 tain the well number, a general description of the well loca-
216 tion, the name and address of the owner of the surface land
217 upon which the well is located, a copy of or record reference
218 to a deed, lease or other document which entitles the applicant
219 to enter upon the surface land, a description of the method by
220 which the well was previously plugged, and a description of
221 the method by which such applicant proposes to clean out
222 and replug the well. At the time an application is filed with
223 the department, a copy shall be mailed by registered or certi-
224 fied mail to the owner or owners of the land, and the oil and
225 gas lessee of record, if any, of the site land upon which the
226 well is located. If no objection to the replugging of the well is

227 filed by any such landowner or oil and gas lessee within thirty
228 days after the filing of the application, and if the department
229 determines that the method proposed for replugging the well
230 will permit the safe mining through of such well, the depart-
231 ment shall grant the application by an order authorizing the
232 replugging of the well. Such order shall specify the method by
233 which the well shall be replugged, and copies thereof shall be
234 mailed by certified or registered mail to the applicant and to
235 the owner or owners of the land, and the oil and gas lessee, if
236 any, of the site upon which such well is located. If any such
237 landowner or oil and gas lessee objects to the replugging of
238 the well, the department shall notify the applicant of such
239 objection. Thereafter, the department shall schedule a hearing
240 to consider the objection, which hearing shall be held after
241 notice by registered or certified mail to the objectors and the
242 applicant. After consideration of the evidence presented at the
243 hearing, the department shall issue an order authorizing the
244 replugging of the well if it determines that replugging of the
245 well will permit the safe mining through of such well. Such
246 order shall specify the manner in which the well shall be re-
247 plugged and copies thereof shall be sent by registered or certi-
248 fied mail to the applicant and objectors. The department shall
249 issue an order rejecting the application if it determines that
250 the proposed method for replugging the well will not permit the
251 safe mining through of such well.

252 (f) All persons adversely affected by a determination or
253 order of the department issued pursuant to the provisions of
254 this section shall be entitled to judicial review thereof in ac-
255 cordance with the provisions of articles five and six, chapter
256 twenty-nine-a of this code.

**§22-4-11. When coal operator to file maps and plans as pre-
requisite to extension of coal operations; petition for
leave to conduct operations within two hundred feet
of well or to mine through a well; proceedings
thereon.**

1 Hereafter, before removing any coal or other material, or
2 driving any entry or passageway within less than five hundred
3 feet of any well, and also before extending the workings in
4 any coal mine beneath any tract of land on which wells are

5 already drilled, or within five hundred feet of any well, or
6 under any tract of land in visible possession by a well opera-
7 tor for the purpose of drilling for oil or gas, the coal operator
8 shall forward, by registered mail, to, or file a copy of the
9 parts of its maps and plans which it is required by law to
10 prepare and file and bring to date, from time to time, showing
11 its mine workings and projected mine workings beneath such
12 tract of land and within five hundred feet of the outer boun-
13 daries thereof, simultaneously, with the well operator and the
14 department of mines, accompanying each of said copies with
15 a notice (form of which shall be furnished on request by
16 the department of mines), addressed to the well operator
17 and to the department of mines at their respective addresses,
18 informing them that such plans or maps and notice are being
19 mailed by registered mail to them, or are being filed and
20 served upon them, respectively, pursuant to the requirements
21 of this section. Following the filing of such parts of said
22 plans or maps as aforesaid, the coal operator may proceed with
23 its mining operations in the manner and as projected on such
24 plans or maps, but shall not remove any coal or other material
25 or cut any passageway nearer than two hundred feet of any
26 completed well, or well that is being drilled, or for the purpose
27 of drilling which a derrick is being constructed, without the
28 consent of the department of mines, and the coal operator
29 shall, at least every six months, bring such plans or maps so
30 filed with the department to date, or file new plans and maps
31 complete to date.

32 Application may be made at any time to the department
33 of mines by the coal operator for leave to mine or remove
34 coal or conduct its mining operations within two hundred
35 feet of any well or to mine through any well, by petition, duly
36 verified, showing the location of the well, the workings
37 adjacent to the well and any other material facts, and what
38 further mining operations within two hundred feet of the
39 well or through such well are contemplated, and praying the
40 approval of the same by the department, and naming the
41 well operator as a respondent. The coal operator shall file
42 such petition with, or mail the same by registered mail to,
43 the department and shall at the same time serve upon or
44 mail by registered mail a true copy to the well operator. The

45 department of mines shall, forthwith upon receipt of such
46 copy, notify the well operator that it may answer the petition
47 within five days, and that in default of an answer the depart-
48 ment may approve the proposed operations as requested,
49 if it be shown by the petitioner or otherwise to the satisfaction
50 of the department that such operations are in accordance
51 with law and with the provisions of this article. At the
52 expiration of such five-day period, the department, whether
53 an answer be filed or not filed, shall fix a time and place of
54 hearing within ten days, of which it shall give the coal oper-
55 ator and the well operator five days' written notice by regis-
56 tered mail, and after a full hearing, at which the well operator
57 and coal operator, as well as the department of mines, shall
58 be permitted to offer any competent and relevant evidence,
59 the department shall grant the request of the coal operator
60 or refuse to grant the same, or make such other decision
61 with respect to such proposed further operations in the vicinity
62 of any such well as in its judgment is just and reasonable under
63 all the circumstances and in accordance with law and the pro-
64 visions of this article: *Provided*, That a grant by the depart-
65 ment of a request to mine through a well shall require an
66 acceptable test to be conducted by the coal operator establish-
67 ing that such mining through can be done safely. The de-
68 partment of mines shall docket and keep a record of all
69 such proceedings substantially as required in the last para-
70 graph of section three of this article, and from any such final
71 decision or order of the department of mines, either the well
72 operator or coal operator, or both, may, within ten days,
73 appeal to the circuit court of the county in which the well
74 about which approval of such further operations is involved
75 is located. The procedure in the circuit court shall be sub-
76 stantially as provided in section four, the department being
77 named as a respondent. From any final order or decree of
78 the circuit court, an appeal may be taken to the supreme court
79 of appeals as heretofore provided.

ARTICLE 4B. SHALLOW GAS WELL REVIEW BOARD.

- §22-4B-1. Declaration of public policy; legislative findings.
- §22-4B-2. Definitions.
- §22-4B-3. Application of article; exclusions.

- §22-4B-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.
- §22-4B-5. Same—Meetings; notice; general powers and duties.
- §22-4B-6. Rules and regulations; notice requirements.
- §22-4B-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.
- §22-4B-8. Distance limitations.
- §22-4B-9. Application to establish a drilling unit; contents; notice.
- §22-4B-10. Establishment of drilling units; hearings; orders.
- §22-4B-11. Pooling of interests in a drilling unit; limitations.
- §22-4B-12. Effect of order establishing drilling unit or pooling of interests; recordation.
- §22-4B-13. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §22-4B-14. Operation on drilling units.
- §22-4B-15. Validity of unit agreements.
- §22-4B-16. Injunctive relief.
- §22-4B-17. Penalties.
- §22-4B-18. Construction.

§22-4B-1. Declaration of public policy; legislative findings.

1 (a) It is hereby declared to be the public policy of this
2 state and in the public interest to:

3 (1) Ensure the safe recovery of coal and gas;

4 (2) Foster, encourage and promote the fullest practical
5 exploration, development, production, recovery and utilization
6 of this state's coal and gas, where both are produced from
7 beneath the same surface lands, by establishing procedures,
8 including procedures for the establishment of drilling units,
9 for the location of shallow gas wells without substantially
10 affecting the right of the gas operator proposing to drill a
11 shallow gas well to explore for and produce gas; and

12 (3) Safeguard, protect and enforce the correlative rights
13 of gas operators and royalty owners in a pool of gas to the
14 end that each such gas operator and royalty owner may ob-
15 tain his just and equitable share of production from such
16 pool of gas.

17 (b) The Legislature hereby determines and finds that gas
18 found in West Virginia in shallow sands or strata has been
19 produced continuously for more than one hundred years;
20 that the placing of shallow wells has heretofore been regulated
21 by the state for the purpose of ensuring the safe recovery of

22 coal and gas, but that regulation should also be directed toward
23 encouraging the fullest practical recovery of both coal and gas
24 because modern extraction technologies indicate the desirability
25 of such change in existing regulation and because the energy
26 needs of this state and the United States require encouragement
27 of the fullest practical recovery of both coal and gas; that
28 in order to encourage and ensure the fullest practical recovery
29 of coal and gas in this state and to further ensure the safe
30 recovery of such natural resources, it is in the public interest
31 to enact new statutory provisions establishing a shallow gas
32 well review board which shall have the authority to regulate
33 and determine the appropriate placing of shallow wells when
34 gas well operators and owners of coal seams fail to agree
35 on the placing of such wells, and establishing specific con-
36 siderations, including minimum distances to be allowed be-
37 tween certain shallow gas wells, to be utilized by the shallow
38 gas well review board in regulating the placing of shallow
39 wells; that in order to encourage and ensure the fullest prac-
40 tical recovery of coal and gas in this state and to protect and
41 enforce the correlative rights of gas operators and royalty
42 owners of gas resources, it is in the public interest to enact
43 new statutory provisions establishing a shallow gas well review
44 board which shall also have authority to establish drilling
45 units and order the pooling of interests therein to provide all
46 gas operators and royalty owners with an opportunity to re-
47 cover their just and equitable share of production.

§22-4B-2. Definitions.

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

3 (1) "Board" means the West Virginia shallow gas well
4 review board provided for in section four of this article;

5 (2) "Chairman" means the chairman of the West Virginia
6 shallow gas well review board provided for in section four of
7 this article;

8 (3) "Coal operator" means any person who proposes to or
9 does operate a coal mine;

10 (4) "Coal seam" and "workable coal bed" are inter-
11 changeable terms and mean any seam of coal twenty inches

12 or more in thickness, unless a seam of less thickness is being
13 commercially worked, or can in the judgment of the depart-
14 ment foreseeably be commercially worked and will require
15 protection if wells are drilled through it;

16 (5) "Commission" means the oil and gas conservation
17 commission provided for in section four, article four-a of this
18 chapter;

19 (6) "Commissioner" means the oil and gas conservation
20 commissioner provided for in section four, article four-a of this
21 chapter;

22 (7) "Correlative rights" means the reasonable opportunity
23 of each person entitled thereto to recover and receive without
24 waste the gas in and under a tract or tracts, or the equivalent
25 thereof;

26 (8) "Deep well" means any well drilled and completed
27 in a formation at or below the top of the uppermost member
28 of the "Onondaga Group" or at a depth of or greater than six
29 thousand feet, whichever is shallower;

30 (9) "Department" or "department of mines" means the
31 state department of mines provided for in section two, article
32 two of this chapter;

33 (10) "Deputy director" means the deputy director for oil
34 and gas provided for in section one-a, article four of this
35 chapter;

36 (11) "Drilling unit" means the acreage on which the board
37 decides one well may be drilled under section ten of this
38 article;

39 (12) "Gas" means all natural gas and all other fluid hydro-
40 carbons not defined as oil in subdivision (15) of this section;

41 (13) "Gas operator" means any person who owns or has the
42 right to develop, operate and produce gas from a pool and to
43 appropriate the gas produced therefrom either for himself
44 or for himself and others. In the event that there is no gas
45 lease in existence with respect to the tract in question, the
46 person who owns or has the gas rights therein shall be con-
47 sidered a "gas operator" to the extent of seven eighths of the

48 gas in that portion of the pool underlying the tract owned by
49 such person, and a "royalty owner" to the extent of one eighth
50 of such gas;

51 (14) "Just and equitable share of production" means, as
52 to each person, an amount of gas in the same proportion to the
53 total gas production from a well as that person's acreage
54 bears to the total acreage in the drilling unit;

55 (15) "Oil" means natural crude oil or petroleum and
56 other hydrocarbons, regardless of gravity, which are produced
57 at the well in liquid form by ordinary production methods and
58 which are not the result of condensation of gas after it leaves
59 the underground reservoir;

60 (16) "Owner" when used with reference to any coal seam,
61 shall include any person or persons who own, lease or operate
62 such coal seam.

63 (17) "Person" means any natural person, corporation,
64 firm, partnership, partnership association, venture, receiver,
65 trustee, executor, administrator, guardian, fiduciary or other
66 representative of any kind, and includes any government or
67 any political subdivision or any agency thereof;

68 (18) "Plat" means a map, drawing or print showing the
69 location of one or more wells or a drilling unit;

70 (19) "Pool" means an underground accumulation of gas in
71 a single and separate natural reservoir (ordinarily a porous
72 sandstone or limestone). It is characterized by a single natural-
73 pressure system so that production of gas from one part of the
74 pool tends to or does affect the reservoir pressure throughout
75 its extent. A pool is bounded by geologic barriers in all
76 directions, such as geologic structural conditions, impermeable
77 strata, and water in the formation, so that it is effectively
78 separated from any other pools which may be present in
79 the same district or in the same geologic structure;

80 (20) "Royalty owner" means any owner of gas in place, or
81 gas rights, to the extent that such owner is not a gas operator
82 as defined in subdivision (13) of this section;

83 (21) "Shallow well" means any gas well drilled and com-
84 pleted in a formation above the top of the uppermost member

85 of the "Onondaga Group" or at a depth less than six thou-
86 sand feet, whichever is shallower;

87 (22) "Tracts comprising a drilling unit" means all separate-
88 ly owned tracts or portions thereof which are included within
89 the boundary of a drilling unit;

90 (23) "Well" means any shaft or hole sunk, drilled, bored
91 or dug into the earth or into underground strata for the
92 extraction, injection or placement of any liquid or gas, or any
93 shaft or hole sunk or used in conjunction with such extrac-
94 tion, injection or placement. The term "well" does not
95 include any shaft or hole sunk, drilled, bored or dug into
96 the earth for the sole purpose of core drilling or pumping or
97 extracting therefrom potable, fresh or usable water for house-
98 hold, domestic, industrial, agricultural or public use; and

99 (24) "Well operator" means any person who proposes to
100 or does locate, drill, operate or abandon any well.

§22-4B-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands located
3 in this state, under which a coal seam as defined in section
4 two, article four-b, chapter twenty-two and section one,
5 article four, chapter twenty-two of this code, one thousand
6 nine hundred thirty-one, as amended, is located, however
7 owned, including any lands owned or administered by any
8 government or any agency or subdivision thereof, over which
9 the state has jurisdiction under its police power. The provi-
10 sions of this article are in addition to and not in derogation of
11 or substitution for the provisions of articles four and four-a of
12 this chapter.

13 (b) This article shall not apply to or affect:

14 (1) Deep wells;

15 (2) Oil wells and enhanced oil recovery wells associated
16 with oil wells;

17 (3) Any shallow well permitted under article four of this
18 chapter prior to 12:01 a.m., August first, one thousand nine
19 hundred seventy-eight, unless such well is, after completion

20 (whether such completion is prior or subsequent to the effective
21 date of this article), deepened subsequent to the effective
22 date of this article through another coal seam to another
23 formation above the top of the uppermost member of the
24 "Onondaga Group" or to a depth of less than six thousand
25 feet, whichever is shallower;

26 (4) Any shallow well as to which no objection is made
27 under section three-b, article four of this chapter;

28 (5) Wells as defined in subdivision (4), section one, article
29 seven of this chapter; or

30 (6) Free gas rights.

31 (c) The provisions of this article affecting applications for
32 permits to drill shallow gas wells shall only apply to such
33 applications filed after 12:01 a.m., August first, one thousand
34 nine hundred seventy-eight, and the provisions of article four
35 of this chapter affecting such applications which were in
36 effect immediately prior to the effective date of this article shall
37 apply to all such applications filed prior to 12:01 a.m.,
38 August first, one thousand nine hundred seventy eight, with
39 like effect as if this article had not been enacted.

§22-4B-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

1 (a) There is hereby created the "West Virginia Shallow
2 Gas Well Review Board" which shall be composed of three
3 members, two of whom shall be the commissioner and the
4 deputy director. The remaining member of the board shall
5 be a registered professional mining engineer with at least
6 ten years practical experience in the coal mining industry
7 and shall be appointed by the governor, by and with the
8 advice and consent of the Senate: *Provided*, That any person
9 so appointed while the Senate of this state is not in session
10 shall be permitted to serve in an acting capacity for one
11 year from his appointment or until the next session of the
12 Legislature, whichever is less. As soon as practical after
13 appointment and qualification of the member appointed by
14 the governor, the governor shall convene a meeting of the

15 board for the purpose of organizing and electing a chairman,
16 who shall serve as such until his successor is elected by the
17 board.

18 (b) The member of the board appointed by the governor
19 shall be appointed within three months of the effective date
20 of this article. A vacancy in the membership appointed by
21 the governor shall be filled by appointment by the governor
22 within sixty days after the occurrence of such vacancy. Before
23 performing any duty hereunder, each member of the board
24 shall take and subscribe to the oath required by section five,
25 article four of the constitution of West Virginia, and shall
26 serve thereafter until his successor has been appointed and
27 qualified.

28 (c) The member of the board appointed by the governor
29 shall receive not less than seventy-five dollars per diem while
30 actually engaged in the performance of his duties as a member
31 of the board. Each member of the board shall also be re-
32 imburSED for all reasonable and necessary expenses actually
33 incurred in the performance of his duties as a member of
34 the board.

35 (d) The department shall furnish office and clerical staff
36 and supplies and services, including reporters for hearings, as
37 required by the board.

§22-4B-5. Same—Meetings; notice; general powers and duties.

1 (a) The board shall meet and hold conferences and hear-
2 ings at such times and places as shall be designated by the
3 chairman. The chairman may call a meeting of the board
4 at any time. The chairman shall call a meeting of the board
5 (1) upon receipt of a notice from the deputy director that an
6 objection to the proposed drilling or deepening of a shallow
7 well has been filed by a coal seam owner pursuant to section
8 three-b, article four of this chapter or that an objection has
9 been made by the department, (2) upon receipt of an applica-
10 tion to establish a drilling unit filed with the board pursuant
11 to section nine of this article, or (3) within twenty days upon
12 the written request by another member of the board. Meet-
13 ings called pursuant to subdivisions (1) and (2) of this sub-
14 section shall be scheduled not less than ten days nor more

15 than twenty days from receipt by the chairman of the notice
16 of objection or the application to establish a drilling unit.
17 Notice of all meetings shall be given to each member of the
18 board by the chairman at least ten days in advance thereof,
19 unless otherwise agreed by the members.

20 (b) At least ten days prior to every meeting of the board
21 called pursuant to the provisions of subdivisions (1) and (2),
22 subsection (a) of this section, the chairman shall also notify
23 (1) in the case of a notice of objection, the well operator and
24 all objecting coal seam owners, and (2) in the case of an
25 application to establish a drilling unit, the applicant, all
26 persons to whom copies of the application were required to
27 be mailed pursuant to the provisions of subsection (d), section
28 nine of this article and all persons who filed written protests
29 or objections with the board in accordance with the pro-
30 visions of subsection (c), section nine of this article.

31 (c) A majority of the members of the board shall con-
32 stitute a quorum for the transaction of any business. A
33 majority of the members of the board shall be required to
34 determine any issue brought before it.

35 (d) The board is hereby empowered and it shall be its
36 duty to execute and carry out, administer and enforce the
37 provisions of this article in the manner provided herein.
38 Subject to the provisions of section three of this article, the
39 board shall have jurisdiction and authority over all persons
40 and property necessary therefor: *Provided*, That the pro-
41 visions of this article shall not be construed to grant to
42 the board authority or power to (1) limit production or output
43 from or prorate production of any gas well, or (2) fix prices
44 of gas.

45 (e) The board shall have specific authority to:

46 (1) Take evidence and issue orders concerning applications
47 for drilling permits and drilling units in accordance with the
48 provisions of this article;

49 (2) Promulgate, pursuant to the provisions of chapter
50 twenty-nine-a of this code, and enforce reasonable rules and
51 regulations necessary to govern the practice and procedure
52 before the board;

53 (3) Make such relevant investigations of records and facili-
54 ties as it deems proper; and

55 (4) Issue subpoenas for the attendance of and sworn
56 testimony by witnesses and subpoenas duces tecum for the
57 production of any books, records, maps, charts, diagrams
58 and other pertinent documents, and administer oaths and
59 affirmations to such witnesses, whenever, in the judgment of
60 the board, it is necessary to do so for the effective discharge
61 of its duties under the provisions of this article.

§22-4B-6. Rules and regulations; notice requirements.

1 (a) The board may promulgate, pursuant to the provisions
2 of chapter twenty-nine-a of this code, such reasonable rules
3 and regulations as are deemed necessary or desirable to im-
4 plement and make effective the provisions of this article.

5 (b) Notwithstanding the provisions of section two, article
6 seven, chapter twenty-nine-a of this code, any notice required
7 under the provisions of this article shall be given at the direc-
8 tion of the chairman by (1) personal or substituted service and
9 if such cannot be had then by (2) certified United States mail,
10 addressed, postage and certification fee prepaid, to the last
11 known mailing address, if any, of the person being served,
12 with the direction that the same be delivered to addressee only,
13 return receipt requested, and if there be no known mailing
14 address or if the notice is not so delivered then by (3) publi-
15 cation of such notice as a Class II legal advertisement in com-
16 pliance with the provisions of article three, chapter fifty-nine
17 of this code, and the publication area for such publication shall
18 be the county or counties wherein any land which may be
19 affected by the order of the board is situate. The chairman
20 shall also mail a copy of such notice to all other persons who
21 have specified to the chairman an address to which all such
22 notices may be mailed. All notices shall issue in the name of
23 the state, shall be signed by the chairman, shall specify the
24 style and number of the proceeding, the date, time and place
25 of any meeting, conference or hearing, and shall briefly state
26 the purpose of the proceeding. Proof of service or publication
27 of such notice shall be made to the board promptly and in
28 any event within the time during which the person served

29 must respond to the notice. If service is made by a person
30 other than the sheriff or the chairman, he shall make proof
31 thereof by affidavit. Failure to make proof of service or pub-
32 lication within the time required shall not affect the validity of
33 the service of the notice.

**§22-4B-7. Objections to proposed drilling; conferences; agreed loc-
cations and changes on plats; hearings; orders.**

1 (a) At the time and place fixed by the chairman for the
2 meeting of the board and for consideration of the objections
3 to proposed drilling filed by coal seam owners pursuant to
4 section three-b, article four of this chapter, the well operator
5 and the objecting coal seam owners present or represented,
6 shall hold a conference with the board to consider the objec-
7 tions. Such persons present or represented at the conference
8 may agree upon either the drilling location as proposed by the
9 well operator or an alternate location. Any change in the
10 drilling location from the drilling location proposed by the
11 well operator shall be indicated on the plat enclosed with the
12 notice of objection filed with the chairman by the deputy di-
13 rector in accordance with the provisions of section three-b,
14 article four of this chapter, and the distance and direction to
15 the new drilling location from the proposed drilling location
16 shall also be shown on such plat. If agreement is reached at
17 the conference by the well operator and such objecting coal
18 seam owners present or represented at the conference, the
19 board shall issue a written order stating that an agreement has
20 been reached, stating the nature of such agreement, and di-
21 recting the department to grant the well operator a drilling
22 permit for the location agreed upon. The original of such
23 order shall be filed with the department within five days after
24 the conference of the board at which the drilling location was
25 agreed upon and copies thereof shall be mailed by registered
26 or certified mail to the well operator and the objecting coal
27 seam owners present or represented at such conference.

28 (b) If the well operator and the objecting coal seam own-
29 ers present or represented at the conference with the board are
30 unable to agree upon a drilling location, then, unless they
31 otherwise agree, the board shall, without recess for more than
32 one business day, hold a hearing to consider the application

33 for a drilling permit. All of the pertinent provisions of article
34 five, chapter twenty-nine-a of this code shall apply to and
35 govern such hearing. Within twenty days after the close of a
36 hearing, the board shall issue and file with the department a
37 written order directing it, subject to other matters requiring
38 approval of the department, to:

39 (1) Refuse a drilling permit; or

40 (2) Issue a drilling permit for the proposed drilling loca-
41 tion; or

42 (3) Issue a drilling permit for an alternate drilling location
43 different from that requested by the well operator; or

44 (4) Issue a drilling permit either for the proposed drilling
45 location or for an alternate drilling location different from that
46 requested by the well operator, but not allow the drilling of
47 the well for a period of not more than one year from the date
48 of issuance of such permit.

49 (c) The written order of the board shall contain findings of
50 fact and conclusions based thereon concerning the following
51 safety aspects, and no drilling permit shall be issued for any
52 drilling location where the board finds from the evidence that
53 such drilling location will be unsafe:

54 (1) Whether the drilling location is above or in close prox-
55 imity to any mine opening or shaft, entry, travelway, airway,
56 haulageway, drainageway or passageway, or to any proposed
57 extension thereof, in any operated or abandoned or operating
58 coal mine, or any coal mine already surveyed and platted but
59 not yet being operated;

60 (2) Whether the proposed drilling can reasonably be done
61 through an existing or planned pillar of coal, or in close
62 proximity to an existing well or such pillar of coal, taking into
63 consideration the surface topography;

64 (3) Whether the proposed well can be drilled safely, taking
65 into consideration the dangers from creeps, squeezes or other
66 disturbances due to the extraction of coal; and

67 (4) The extent to which the proposed drilling location un-
68 reasonably interferes with the safe recovery of coal and gas.

69 The written order of the board shall also contain findings
70 of fact and conclusions based thereon concerning the follow-
71 ing:

72 (5) The extent to which the proposed drilling location will
73 unreasonably interfere with present or future coal mining
74 operations on the surface including, but not limited to, opera-
75 tions subject to the provisions of article six, chapter twenty
76 of this code;

77 (6) The feasibility of moving the proposed drilling location
78 to a mined-out area, below the coal outcrop, or to some other
79 location;

80 (7) The feasibility of a drilling moratorium for not more
81 than one year in order to permit the completion of imminent
82 coal mining operations;

83 (8) The methods proposed for the recovery of coal and
84 gas;

85 (9) The distance limitations established in section eight of
86 this article;

87 (10) The practicality of locating the well on a uniform pat-
88 tern with other wells;

89 (11) The surface topography and use; and

90 (12) Whether the order of the board will substantially
91 affect the right of the gas operator to explore for and produce
92 gas.

93 Any member of the board may file a separate opinion.
94 Copies of all orders and opinions shall be mailed by the board,
95 by registered or certified mail, to the parties present or repre-
96 sented at the hearing.

§22-4B-8. Distance limitations.

1 (a) If the well operator and the objecting coal seam
2 owners present or represented at the time and place fixed by
3 the chairman for consideration of the objections to the pro-
4 posed drilling location are unable to agree upon a drilling
5 location, then the written order of the board shall direct the

6 department to refuse to issue a drilling permit unless the
7 following distance limitations are observed:

8 (1) For all shallow wells with a depth less than three thou-
9 sand feet, there shall be a minimum distance of one thou-
10 sand feet from the drilling location to the nearest existing
11 well as defined in subsection (b) of this section; and

12 (2) For all shallow wells with a depth of three thousand
13 feet or more, there shall be a minimum distance of one
14 thousand five hundred feet from the drilling location to the
15 nearest existing well as defined in subsection (b) of this sec-
16 tion, except that where the distance from the drilling location
17 to such nearest existing well is less than two thousand feet but
18 more than one thousand five hundred feet and a coal seam
19 owner has objected, the gas operator shall have the burden of
20 establishing the need for the drilling location less than two
21 thousand feet from such nearest existing well. Where the
22 distance from the drilling location proposed by the operator
23 or designated by the board to the nearest existing well as
24 defined in subsection (b) of this section is greater than two
25 thousand feet, distance criterion will not be a ground for
26 objection by a coal seam owner.

27 (b) The words "existing well" as used in this section shall
28 mean (i) any well not plugged within nine months after being
29 drilled to its total depth and either completed in the same
30 target formation or drilled for the purpose of producing from
31 the same target formation, and (ii) any unexpired, permitted
32 drilling location for a well to the same target formation.

33 (c) The minimum distance limitations established by this
34 section shall not apply if the proposed well will be drilled
35 through an existing or planned pillar of coal required for
36 protection of a preexisting oil or gas well and the proposed
37 well will neither require enlargement of such pillar nor
38 otherwise have an adverse effect on existing or planned coal
39 mining operations.

40 (d) Nothing in this article shall be construed to empower
41 the board to order the department to issue a drilling permit to
42 any person other than the well operator filing the application
43 which is the subject of the proceedings.

§22-4B-9. Application to establish a drilling unit; contents; notice.

1 (a) Whenever the board has issued an order directing the
2 department to refuse a drilling permit, the gas operator may
3 apply to the board for the establishment of a drilling unit
4 encompassing a contiguous tract or tracts if such gas operator
5 believes that such a drilling unit will afford one well location
6 for the production of gas from under the tract on which the
7 drilling permit was sought, and will be agreeable to the coal
8 seam owners.

9 (b) An application to establish a drilling unit shall be
10 filed with the board and shall contain:

11 (1) The name and address of the applicant;

12 (2) A plat prepared by a licensed land surveyor or regis-
13 tered professional engineer showing the boundary of the
14 proposed drilling unit, the district and county in which such
15 unit is located, the acreage of the proposed drilling unit, the
16 boundary of the tracts which comprise the proposed drilling
17 unit, the names of the owners of record of each such tract,
18 the proposed well location on the proposed drilling unit,
19 and the proposed well location for which the department re-
20 fused to issue a drilling permit;

21 (3) The names and addresses of the royalty owners of the
22 gas underlying the tracts which comprise the proposed drilling
23 unit;

24 (4) The names and addresses of the gas operators of the
25 tracts which comprise the proposed drilling unit;

26 (5) The approximate depth and target formation to which
27 the well for the proposed drilling unit is to be drilled;

28 (6) A statement indicating whether a voluntary pooling
29 agreement has been reached among any or all of the royalty
30 owners of the gas underlying the tracts which comprise the
31 proposed drilling unit and the gas operators of such tracts;

32 (7) An affidavit of publication of the notice of intent to
33 file an application to establish a drilling unit as required in
34 subsection (c) of this section; and

35 (8) Such other pertinent and relevant information the
36 board may prescribe by reasonable rules and regulations
37 promulgated in accordance with the provisions of section six
38 of this article.

39 (c) Prior to the filing of an application to establish a
40 drilling unit, the applicant shall cause to be published, as a
41 Class II legal advertisement in accordance with the provisions
42 of article three, chapter fifty-nine of this code, a notice of
43 intent to file an application to establish a drilling unit. Such
44 notice shall contain the information required by subdivisions
45 (1), (4) and (5), subsection (b) of this section, the name
46 of the royalty owner of the gas underlying the proposed well
47 location on the proposed drilling unit, plus an abbreviated
48 description, or, at the applicant's option, a plat of the drilling
49 unit, disclosing the county and district wherein the proposed
50 drilling unit is to be located, the post office closest to the
51 proposed drilling unit, a statement that the applicant will
52 deliver a copy of the plat required by subdivision (2) of sub-
53 section (b) to any person desiring the same, the date upon
54 which the applicant intends to file the application to establish a
55 drilling unit, and a statement that written protests and objec-
56 tions to such application may be filed with the board until a
57 specified date, which date shall be at least ten days after the
58 date upon which the applicant intends to file the application to
59 establish a drilling unit. The publication area of the notice re-
60 quired by this subsection shall be the county or counties in
61 which the proposed drilling unit is to be located.

62 (d) At the time an application to establish a drilling unit is
63 filed, the applicant shall forward a copy thereof by registered
64 or certified mail to each and every person whose name and
65 address were included on the application in accordance with
66 the provisions of subdivisions (3) and (4), subsection (b)
67 of this section. With each such application there shall be
68 enclosed a notice (the form for which shall be furnished by
69 the board on request) addressed to each such person to whom
70 a copy of the application is required to be sent, informing him
71 that such application is being mailed to him respectively by
72 registered or certified mail, pursuant to the requirements of
73 this article: *Provided*, That the application and notice need
74 not be forwarded to those royalty owners or gas operators

75 within the boundary of the proposed drilling unit who have
76 previously agreed to voluntary pooling by separately stated
77 document or documents empowering the gas operator, by
78 assignment or otherwise, unilaterally to declare a unit.

§22-4B-10. Establishment of drilling units; hearings; orders.

1 (a) At the time and place fixed by the chairman for the
2 meeting of the board and for consideration of an application
3 to establish a drilling unit, the applicant shall present proof
4 that the drilling location on the proposed drilling unit has
5 been agreed to by all of the owners of the coal seams under-
6 lying such drilling location; and thereafter the applicant, the
7 royalty owners of the gas underlying the tracts comprising
8 the unit, and the gas operators of the tracts comprising the
9 unit, or such of them as are present or represented, shall hold
10 a conference with the board to consider the application.
11 Such persons present or represented at the conference may
12 agree upon the boundary of the drilling unit as proposed by
13 the applicant or as changed to satisfy all valid objections of
14 those persons present or represented. Any change in the
15 boundary of the drilling unit from the boundary proposed
16 by the applicant shall be shown on the plat filed with the
17 board as part of the application. If agreement is reached
18 at the conference upon the boundary of the drilling unit
19 among the applicants, the royalty owners of the gas under-
20 lying the tracts comprising the drilling unit and the gas
21 operators of the tracts comprising such unit, or such of them
22 as are present or represented, and if such agreement is ap-
23 proved by the board, the board shall issue a written order
24 establishing and specifying the boundary of the drilling unit.

25 (b) If the applicant, the royalty owners of the gas under-
26 lying the tracts comprising the drilling unit and the gas
27 operators of the tracts comprising such unit, or such of them
28 as are present or represented at the time and place fixed
29 by the chairman for consideration of the application, are
30 unable to agree upon the boundary of the drilling unit, then
31 the board shall hold a hearing without recess of more than
32 one business day to consider the application to establish a
33 drilling unit. All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code shall apply to and govern

35 such hearing. Within twenty days after the close of the
36 hearing, the board shall issue a written order either estab-
37 lishing a drilling unit or dismissing the application. If the
38 board determines to establish a drilling unit, the order shall
39 specify the boundary of such drilling unit. In determining
40 whether to grant or deny an application to establish a drilling
41 unit, the board shall consider:

42 (1) The surface topography and property lines of the lands
43 comprising the drilling unit;

44 (2) The correlative rights of all gas operators and royalty
45 owners therein;

46 (3) The just and equitable share of production of each
47 gas operator and royalty owner therein;

48 (4) Whether a gas operator or royalty owner objecting to
49 the drilling unit has proved by clear and convincing evidence
50 that the drilling unit is substantially smaller than the area
51 that will be produced by the proposed well; and

52 (5) Other evidence relevant to the establishment of the
53 boundary of a drilling unit.

54 (c) The board shall not grant an application to establish a
55 drilling unit, nor shall it approve any drilling unit, unless
56 the board finds that:

57 (1) The applicant has proved that the drilling location on
58 the drilling unit has been agreed to by all of the owners of
59 the coal seams underlying such drilling location;

60 (2) The department has previously refused to issue a drill-
61 ing permit on one of the tracts comprising the drilling unit
62 because of an order of the board;

63 (3) The drilling unit includes all acreage within the mini-
64 mum distance limitations provided by section eight of this
65 article, unless the gas operators and royalty owners of any
66 excluded acreage have agreed to such exclusion; and

67 (4) The drilling unit includes a portion of the acreage
68 from under which the well operator intended to produce gas
69 under the drilling permit which was refused.

70 (d) All orders issued by the board under this section shall
71 contain findings of fact and conclusions based thereon as
72 required by section three, article five, chapter twenty-nine-a
73 of this code and shall be filed with the department within
74 twenty days after the hearing. Any member of the board
75 may file a separate opinion. Copies of all orders and opinions
76 shall be mailed by the board, by registered or certified mail,
77 to the parties present or represented at the hearing.

§22-4B-11. Pooling of interests in a drilling unit; limitations.

1 (a) Whenever the board establishes a drilling unit pursuant
2 to the provisions of sections nine and ten of this article, the
3 order establishing such drilling unit shall include an order
4 pooling the separately owned interests in the gas to be pro-
5 duced from such drilling unit.

6 (b) If a voluntary pooling agreement has been reached be-
7 tween all persons owning separate operating interests in the
8 tracts comprising the drilling unit, the order of the board shall
9 approve such agreement.

10 (c) If no voluntary pooling agreement is reached prior to
11 or during the hearing held pursuant to subsection (b), section
12 ten of this article, then at such hearing the board shall also
13 determine the pooling of interests in the drilling unit.

14 (d) Any order of the board pooling the separately owned
15 interests in the gas to be produced from the drilling unit shall
16 be upon terms and conditions which are just and equitable and
17 shall authorize the production of gas from the drilling unit;
18 shall designate the applicant as the operator to drill and oper-
19 ate such gas well; shall prescribe the procedure by which all
20 owners of operating interests in the pooled tracts or portions
21 of tracts may elect to participate therein; shall provide that all
22 reasonable costs and expenses of drilling, completing, equip-
23 ping, operating, plugging, abandoning and reclaiming such
24 well shall be borne, and all production therefrom shared, by
25 all owners of operating interests in proportion to the net gas
26 acreage in the pooled tracts owned or under lease to each
27 owner; and shall make provisions for payment of all reason-
28 able costs thereof, including all reasonable charges for super-

29 vision and for interest on past-due accounts, by all those who
30 elect to participate therein.

31 (e) Upon request, any such pooling order shall provide an
32 owner of an operating interest an election to be made within
33 ten days from the date of the pooling order, (i) to participate
34 in the risks and costs of the drilling of the well, or (ii) to par-
35 ticipate in the drilling of the well on a limited or carried basis
36 on terms and conditions which, if not agreed upon, shall be
37 determined by the board to be just and equitable. If the
38 election is not made within the ten-day period, such owner
39 shall be conclusively presumed to have elected the limited or
40 carried basis. Thereafter, if an owner of any operating interest
41 in any portion of the pooled tract shall drill and operate, or
42 pay the costs of drilling and operating, a well for the benefit
43 of such nonparticipating owner as provided in the order of the
44 board, then such operating owner shall be entitled to the share
45 of production from the tracts or portions thereof pooled ac-
46 cording to the interest of such nonparticipating owner, ex-
47 clusive of any royalty or overriding royalty reserved with re-
48 spect to such tracts or portions thereof, or exclusive of one
49 eighth of the production attributable to all unleased tracts or
50 portions thereof, until the market value of such nonparti-
51 cipating owner's share of the production, exclusive of such
52 royalty, overriding royalty or one eighth of production, equals
53 double the share of such costs payable by or charged to the
54 interest of such nonparticipating owner.

55 (f) In no event shall drilling be initiated or completed on
56 any tract, where the gas underlying such tract has not been
57 severed from the surface thereof by deed, lease or other title
58 document, without the written consent of the person who owns
59 such tract.

60 (g) All disputes which may arise as to the costs of drilling
61 and operating a well under a pooling order issued pursuant to
62 this section shall be resolved by the board within ninety days
63 from the date of written notification to the board of the exis-
64 tence of such dispute.

§22-4B-12. Effect of order establishing drilling unit or pooling of interests; recordation.

1 (a) An order issued by the board establishing a drilling unit

2 and ordering the pooling of interests therein shall not entitle
3 the gas operator designated in such order to drill a well on such
4 drilling unit until such gas operator shall have received a drill-
5 ing permit in accordance with the provisions applicable to al-
6 ternative drilling locations set out in section three-b of article
7 four of this chapter. All orders issued by the board establish-
8 ing a drilling unit shall be filed with the department and shall
9 also direct the department to issue a drilling permit for the
10 drilling location agreed to by all of the owners of the coal
11 seams underlying such drilling location.

12 (b) A certified copy of any order of the board establishing
13 a drilling unit or a pooling of interests shall be mailed by the
14 board to the clerk of the county commission of each county
15 wherein all or any portion of the drilling unit is located, for
16 recordation in the record book of such county in which oil and
17 gas leases are normally recorded. Such recordation from the
18 time noted thereon by such clerk shall be notice of the order
19 to all persons.

**§22-4B-13. Judicial review; appeal to supreme court of appeals;
legal representation for board.**

1 (a) Any person adversely affected by an order of the board
2 shall be entitled to judicial review thereof. All of the pertinent
3 provisions of section four, article five, chapter twenty-nine-a
4 of this code shall apply to and govern such judicial review
5 with like effect as if the provisions of said section four were
6 set forth in extenso in this section.

7 (b) The judgment of the circuit court shall be final unless
8 reversed, vacated or modified on appeal to the supreme court
9 of appeals in accordance with the provisions of section one,
10 article six, chapter twenty-nine-a of this code.

11 (c) Legal counsel and services for the board in all appeal
12 proceedings in any circuit court and the supreme court of
13 appeals shall be provided by the attorney general or his as-
14 sistants and in any circuit court by the prosecuting attorney of
15 the county as well, all without additional compensation. The
16 board, with the written approval of the attorney general, may
17 employ special counsel to represent the board at any such
18 appeal proceedings.

§22-4B-14. Operation on drilling units.

1 All operations including, but not limited to, the commence-
2 ment, drilling or operation of a well upon a drilling unit for
3 which a pooling order has been entered, shall be deemed for
4 all purposes the conduct of such operations upon each sep-
5 arately owned tract in the drilling unit by the several owners
6 thereof. That portion of the production allocated to a separate-
7 ly owned tract included in a drilling unit shall, when produced,
8 be deemed for all purposes to have been actually produced
9 from such tract by a well drilled thereon.

§22-4B-15. Validity of unit agreements.

1 No agreement between or among gas operators, lessees
2 or other owners of gas rights in gas properties, entered into
3 pursuant to the provisions of this article or with a view to or
4 for the purpose of bringing about the unitized development or
5 operation of such properties, shall be held to violate the
6 statutory or common law of this state prohibiting monopolies
7 or acts, arrangements, contracts, combinations or conspiracies
8 in restraint of trade or commerce.

§22-4B-16. Injunctive relief.

1 (a) Whenever it appears to the board that any person has
2 been or is violating or is about to violate any provision of
3 this article, any rule and regulation promulgated by the board
4 hereunder or any order or final decision of the board, the
5 board may apply in the name of the state to the circuit court
6 of the county in which the violations or any part thereof
7 has occurred, is occurring or is about to occur, or to the
8 judge thereof in vacation, for an injunction against such
9 person and any other persons who have been, are or are
10 about to be, involved in any practices, acts or omissions, so
11 in violation, enjoining such person or persons from any such
12 violation or violations. Such application may be made and
13 prosecuted to conclusion whether or not any such violation
14 or violations have resulted or shall result in prosecution or
15 conviction under the provisions of section seventeen of this
16 article.

17 (b) Upon application by the board, the circuit courts of
18 this state may by mandatory or prohibitory injunction compel

19 compliance with the provisions of this article, the rules and
20 regulations promulgated by the board hereunder and all
21 orders of the board. The court may issue a temporary in-
22 junction in any case pending a decision on the merits of
23 any application filed. Any other section of this code to the
24 contrary notwithstanding, the state shall not be required to
25 furnish bond or other undertaking as a prerequisite to ob-
26 taining mandatory, prohibitory or temporary injunctive relief
27 under the provisions of this article.

28 (c) The judgment of the circuit court upon any application
29 permitted by the provisions of this section shall be final unless
30 reversed, vacated or modified on appeal to the supreme court
31 of appeals. Any such appeal shall be sought in the manner
32 and within the time provided by law for appeals from circuit
33 courts in other civil actions.

34 (d) The board shall be represented in all such proceedings
35 by the attorney general or his assistants and in such pro-
36 ceedings in the circuit courts by the prosecuting attorneys of
37 the several counties as well, all without additional compensa-
38 tion. The board, with the written approval of the attorney
39 general, may employ special counsel to represent the board in
40 any such proceedings.

41 (e) If the board shall refuse or fail to apply for an in-
42 junction to enjoin a violation or threatened violation of any
43 provision of this article, any rule and regulation promulgated
44 by the board hereunder or any order or final decision of the
45 board, within ten days after receipt of a written request to
46 do so by any person who is or will be adversely affected by
47 such violation or threatened violation, the person making
48 such request may apply in his own behalf for an injunction
49 to enjoin such violation or threatened violation in any court
50 in which the board might have brought suit. The board shall
51 be made a party defendant in such application in addition to
52 the person or persons violating or threatening to violate any
53 provision of this article, any rule and regulation promulgated
54 by the board hereunder or any order of the board. The
55 application shall proceed and injunctive relief may be granted
56 without bond or other undertaking in the same manner as
57 if the application had been made by the chairman.

§22-4B-17. Penalties.

1 (a) Any person who violates any provision of this article,
2 any of the rules and regulations promulgated by the board
3 hereunder or any order of the board other than a violation
4 governed by the provisions of subsection (b) of this section,
5 shall be guilty of a misdemeanor, and, upon conviction there-
6 of, shall be fined not more than one thousand dollars.

7 (b) Any person who, with the intention of evading any
8 provision of this article, any of the rules and regulations pro-
9 mulgated by the board hereunder or any order of the board
10 shall make or cause to be made any false entry or statement
11 in any application or other document permitted or required
12 to be filed under the provisions of this article, any of the
13 rules and regulations promulgated by the board hereunder
14 or any order of the board, shall be guilty of a misdemeanor,
15 and, upon conviction thereof, shall be fined not more than
16 five thousand dollars, or imprisoned in the county jail not
17 more than six months, or both fined and imprisoned.

18 (c) Any person who knowingly aids or abets any other
19 person in the violation of any provision of this article, any of
20 the rules and regulations promulgated by the board hereunder
21 or any order or final decision of the board, shall be subject to
22 the same penalty as that prescribed in this article for the
23 violation by such other person.

§22-4B-18. Construction.

1 This article shall be liberally construed so as to effectuate
2 the declaration of public policy set forth in section one of this
3 article.

CHAPTER 85

(Com. Sub. for S. B. 56—By Mr. Galperin and Mr. Nelson)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five and six, article nine-a, chapter six of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to open governmental proceedings; providing for open meetings; relating to notice of time and place of such meetings; relating to executive sessions; requiring majority vote of members of board present for executive session; providing exceptions; relating to minutes of meetings and executive sessions; enforcement by injunction; relating to voidable action and violation of article; providing for penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five and six, article nine-a, chapter six 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 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-2. Definitions.

§6-9A-3. Proceedings to be open; public notice of meetings.

§6-9A-4. Exceptions.

§6-9A-5. Minutes.

§6-9A-6. Enforcement by injunction; actions in violation of article voidable.

§6-9A-7. Violation of article; penalties.

§6-9A-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote
3 or final disposition of a motion, proposal, resolution,
4 order, ordinance or measure on which a vote of the
5 governing body is required at any meeting at which a
6 quorum is present;

7 (2) "Executive session" means any meeting or part
8 of a meeting of a governing body which is closed to the
9 public;

10 (3) "Governing body" means the members of any public
11 body having the authority to make decisions for or recom-
12 mendations to a public body on policy or administration,
13 the membership of which governing body consists of two
14 or more members;

15 (4) "Meeting" means the convening of a governing
16 body of a public body for which a quorum is required
17 in order to make a decision or to deliberate toward a
18 decision on any matter, but such term does not include
19 (a) any meeting for the purpose of making an adjudi-
20 catory decision in any quasi-judicial, administrative or
21 court of claims proceeding, (b) any on-site inspection
22 of any project or program, or (c) any political party
23 caucus;

24 (5) "Political subdivision" means any county, county
25 board of education or municipality in or any other politi-
26 cal subdivision of this state;

27 (6) "Public body" means any executive, legislative
28 or administrative body or agency of this state or any
29 political subdivision, or any commission, board, council,
30 bureau, committee or subcommittee or any other agency
31 of any of the foregoing, and such term shall not be
32 construed to include the judicial branch of government,
33 state or local; and

34 (7) "Quorum" means, unless otherwise defined by ap-
35 plicable law, a simple majority of the constituent mem-
36 bership of a governing body.

§6-9A-3. Proceedings to be open; public notice of meetings.

1 Except as expressly and specifically otherwise pro-
2 vided by law, whether heretofore or hereinafter enacted,
3 and except as provided in section four of this article,
4 all meetings of any governing body shall be open to the
5 public. Any governing body may make and enforce
6 reasonable rules and regulations for attendance at any
7 meeting where there is not room enough for all mem-
8 bers of the public who wish to attend, and this article
9 shall not be construed to prohibit the removal from a
10 meeting of any member of the public who is disrupting
11 the meeting to the extent that orderly conduct of the
12 meeting is compromised.

13 Each governing body shall promulgate rules by which
14 the time and place of all regularly scheduled meetings and
15 the time, place and purpose of all special meetings are

16 made available, in advance, to the public and news media,
17 except in the event of an emergency requiring immediate
18 official action.

§6-9A-4. Exceptions.

1 No provision of this article shall be construed to pre-
2 vent the governing body of a public body from holding
3 an executive session during a regular, special or emer-
4 gency meeting, after the presiding officer has identified
5 the authorization under this article for the holding of
6 such executive session and has presented it to the
7 governing body and to the general public, but no deci-
8 sion shall be made in such executive session.

9 An executive session may be held only upon a majority
10 affirmative vote of the members present of the govern-
11 ing body of a public body as defined in this article for the
12 following:

13 (1) Matters of war, threatened attack from a foreign
14 power, civil insurrection or riot; or

15 (2) The appointment, employment, retirement, promo-
16 tion, demotion, disciplining, resignation, discharge, dis-
17 missal or compensation of any public officer or employee,
18 or other personnel matters, or for the purpose of con-
19 ducting a hearing on a complaint against a public officer
20 or employee, unless such public officer or employee re-
21 quests an open meeting; or

22 (3) The disciplining, suspension or expulsion of any
23 student in any public school or public college or uni-
24 versity, unless such student requests an open meeting;
25 or

26 (4) The issuance, effecting, denial, suspension or re-
27 vocation of a license, certificate or registration under
28 the laws of this state or any political subdivision, unless
29 the person seeking such license, certificate or registration
30 or whose license, certificate or registration was denied,
31 suspended or revoked requests an open meeting; or

32 (5) The physical or mental health of any person, un-
33 less such person requests an open meeting; or

34 (6) Matters which, if discussed in public, would be
35 likely to affect adversely the reputation of any person;
36 or

37 (7) Any official investigation or matters relating to
38 crime prevention or law enforcement; or

39 (8) The development of security personnel or devices;
40 or

41 (9) Matters involving or affecting the purchase, sale
42 or lease of property, advance construction planning, the
43 investment of public funds or other matters involving
44 competition which, if made public, might adversely affect
45 the financial or other interest of the state or any political
46 subdivision.

§6-9A-5. Minutes.

1 Each governing body shall provide for the preparation
2 of written minutes of all of its meetings. All such
3 minutes shall be available to the public within a reason-
4 able time after the meeting and shall include, at least,
5 the following information:

6 (1) The date, time and place of the meeting;

7 (2) The name of each member of the governing body
8 present and absent;

9 (3) All motions, proposals, resolutions, orders, ordi-
10 nances and measures proposed, the name of the person
11 proposing the same and their disposition; and

12 (4) The results of all votes and, upon the request of a
13 member, the vote of each member, by name.

14 Minutes of executive sessions may be limited to material
15 the disclosure of which is not inconsistent with the pro-
16 visions of section four of this article.

§6-9A-6. Enforcement by injunction; actions in violation of article voidable.

1 The circuit court in the county where the public body
2 regularly meets or the judge thereof in vacation shall have
3 jurisdiction to issue an injunction to enforce the purposes

4 of this section upon petition by any citizen of this state
5 who can show a good faith and valid reason for making
6 such application. No bond shall be required unless such
7 petition appears to be without merit or made with the
8 sole intent of harassing or delaying or avoiding return
9 by the governing body.

10 Any actions taken or decisions made in violation of
11 this article may be voidable upon petition filed within
12 thirty days after such actions or decisions to the afore-
13 said circuit court or the judge thereof in vacation and
14 such court may order that such actions taken or decision
15 made be performed in compliance with the provisions of
16 this article.

§6-9A-7. Violation of article; penalties.

1 Any person who is a member of a public or govern-
2 mental body required to conduct open meetings in com-
3 pliance with the provisions of this article and who will-
4 fully and knowingly violates the provisions of this article
5 shall be guilty of a misdemeanor, and, upon conviction
6 thereof, shall be fined not less than one hundred dollars
7 nor more than five hundred dollars, or imprisoned in
8 the county jail not more than ten days, or both fined and
9 imprisoned.

CHAPTER 86

(Com. Sub. for S. B. 64—By Mr. Brotherton, Mr. President)

[Passed March 8, 1978; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chap-
ter thirty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to denial, suspen-
sion or revocation of a license or registration; procedures
and judicial review.

Be it enacted by the Legislature of West Virginia:

That section eight, 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.

§30-1-8. Denial, suspension or revocation of a license or registration; proceedings; effect of suspension or revocation; transcript; report; judicial review.

1 (a) Notwithstanding any other provision of law to
2 the contrary, no certificate, license, registration or au-
3 thority issued under the provisions of this chapter may
4 be suspended or revoked without a prior hearing before
5 the board or court issuing said certificate, license, regis-
6 tration or authority.

7 (b) In all proceedings before a board or court for the
8 suspension or revocation of any certificate, license, regis-
9 tration or authority issued under the provisions of this
10 chapter, a statement of the charges against the holder
11 thereof and a notice of the time and place of hearing
12 shall be served upon such person as a notice is served
13 under section one, article two, chapter fifty-six of this
14 code, at least thirty days prior to the hearing, and he
15 may appear with witnesses and be heard in person, by
16 counsel, or both. The board may take such oral or written
17 proof, for or against the accused, as it may deem advis-
18 able. If upon such hearing the board finds that the
19 charges are true, it may suspend or revoke the certificate,
20 license, registration or authority, and such suspension or
21 revocation shall take from the person all rights and
22 privileges acquired thereby.

23 (c) Any person denied a license, certificate, registra-
24 tion or authority who believes such denial was in viola-
25 tion of this article or the article under which said license,
26 certificate, registration or authority is authorized shall
27 be entitled to a hearing on the action denying said
28 license, certificate, registration or authority. Hearings
29 under this subsection shall be in accordance with the
30 provisions for hearings set forth in subsection (b).

31 (d) A stenographic report of each proceeding on the
 32 denial, suspension or revocation of a certificate, license,
 33 registration or authority shall be made at the expense of
 34 the board and a transcript thereof retained in its files.
 35 The board shall make a written report of its findings,
 36 which shall constitute part of the record.

37 (e) All proceedings under the provisions of this section
 38 shall be subject to review by the supreme court of appeals.

CHAPTER 87

(Com. Sub. for S. B. 242—By Mr. Brotherton, Mr. President, Mr. Galperin and Mr. Jones)

(Passed March 10, 1978; in effect July 1, 1978. Approved by the Governor.)

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to establishing the West Virginia occupational therapy practice act; short title; declaration of purpose; definitions; license required; West Virginia board of occupational therapy; powers and duties of board; persons and practices not affected; qualifications of applicants; examination; waiver of requirements for licensure; issuance of license; renewal of license; suspension and revocation of license; procedures for hearing; judicial review; penalties; and actions to enjoin violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 28. WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT.

- §30-28-1. Short title.
- §30-28-2. Declaration of purpose.
- §30-28-3. Definitions.
- §30-28-4. License required; treatment by referral only; limitation on practice by assistant.

- §30-28-5. West Virginia board of occupational therapy; establishment; terms of office; vacancies; removal of members; meetings; compensation.
- §30-28-6. Powers and duties of board.
- §30-28-7. License required; persons and practices not affected.
- §30-28-8. Qualifications of applicants for license.
- §30-28-9. Examination.
- §30-28-10. Waiver of requirements for licensure.
- §30-28-11. Issuance of a license.
- §30-28-12. Renewal of license.
- §30-28-13. Suspension and revocation of license; refusal to renew.
- §30-28-14. Procedures for hearing.
- §30-28-15. Fees.
- §30-28-16. Judicial review; appeal to supreme court of appeals; legal representation for board.
- §30-28-17. Penalties.
- §30-28-18. Actions to enjoin violations.

§30-28-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Occupational Therapy Practice Act."

§30-28-2. Declaration of purpose.

- 1 The West Virginia occupational therapy practice act
- 2 is enacted to safeguard the public health, safety and
- 3 welfare, and to assure the availability of high quality
- 4 occupational therapy services to persons in need of such
- 5 services. It is the purpose of this article to provide for
- 6 the regulation of persons presenting themselves as an
- 7 occupational therapist or as an occupational therapy
- 8 assistant.

§30-28-3. Definitions.

- 1 In this article, the following terms shall have the
- 2 respective meanings provided in this section unless the
- 3 context clearly requires a different meaning:
- 4 (a) "Association" means the West Virginia occupa-
- 5 tional therapy association.
- 6 (b) "Board" means the West Virginia board of occu-
- 7 pational therapy.
- 8 (c) "License" means a valid and current certificate of
- 9 registration issued by the West Virginia board of occu-
- 10 pational therapy.

11 (d) "Occupational therapy" means the evaluation,
12 treatment and aid in diagnosis of problems interfering
13 with functional performance in persons impaired by
14 physical illness or injury, emotional disorder, congenital
15 or developmental disability, or the aging process in order
16 to achieve optimum functioning and for prevention and
17 health maintenance. Specific occupational therapy ser-
18 vices include, but are not limited to, activities of daily
19 living (ADL); the design, fabrication and application
20 of splints; sensorimotor activities; the use of specifically
21 designed crafts; guidance in the selection and use of
22 adaptive equipment; therapeutic activities to enhance
23 functional performance; prevocational evaluation and
24 training; and consultation concerning the adaption of
25 physical environments for the handicapped. These ser-
26 vices are provided to individuals or groups through medi-
27 cal, health, educational and social systems and for the
28 maintenance of health through these systems.

29 (e) "Occupational therapist" means a person licensed
30 to practice occupational therapy as defined in this article,
31 and whose license is in good standing.

32 (f) "Occupational therapy assistant" means a person
33 licensed to assist in the practice of occupational therapy
34 under the general supervision of the licensed occupational
35 therapist, and whose license is in good standing. As
36 contained in this section, the term "general supervision"
37 means initial direction and periodic inspection of the
38 actual activities; however, the supervising licensed occu-
39 pational therapist need not always be physically present
40 or on the premises when the licensed assistant is per-
41 forming services.

42 (g) "Occupational therapy aide" means a person who
43 assists in the practice of occupational therapy, who works
44 under the direct supervision of an occupational therapist
45 and the occupational therapy assistant, and whose ac-
46 tivities require an understanding of occupational therapy
47 but do not require professional or advanced training in
48 the basic anatomical, biological, psychological and social
49 sciences involved in the practice of occupational therapy.

50 As contained in this section, the term "direct supervision"
51 shall mean the actual physical presence of a licensed
52 occupational therapist or licensed occupational therapy
53 assistant.

§30-28-4. License required; treatment by referral only; limitation on practice by assistant.

1 (a) No person may present himself as an occupa-
2 tional therapist or occupational therapy assistant in
3 this state unless she or he is licensed in accordance
4 with the provisions of this article. No firm, partner-
5 ship, association or corporation may advertise or other-
6 wise offer to provide or convey the impression that it is
7 providing occupational therapy unless an individual
8 holding a current valid license or permit under this
9 article is or will at the appropriate time be rendering
10 the occupational therapy services to which reference is
11 made.

12 (b) A licensed occupational therapist shall not treat
13 persons by occupational therapy or otherwise other than
14 referral by a licensed physician or surgeon, psychologist
15 or psychiatrist, dentist, osteopathic physician or surgeon,
16 or chiropodist or podiatrist. A licensed occupational
17 therapy assistant shall not practice occupational therapy
18 other than in accordance with the definitional require-
19 ments of an occupational therapy assistant as specified
20 in subdivision (f), section three of this article.

§30-28-5. West Virginia board of occupational therapy; establishment; terms of office; vacancies; removal of members; meetings; compensation.

1 (a) There is hereby established the West Virginia
2 board of occupational therapy which shall consist of
3 five members appointed by the governor by and with
4 the advice and consent of the Senate. The members
5 of the board shall be citizens of the United States and
6 residents of this state for at least one year prior to their
7 appointment. Three members shall have been engaged
8 in rendering occupational therapy services to the public
9 by teaching or performing research in occupational
10 therapy for at least three years immediately preceding

11 their appointment or shall have been a registered oc-
12 cupational therapist for at least three years immediately
13 preceding their appointment. One such member so ap-
14 pointed shall have been engaged in rendering occupa-
15 tional therapy services as a registered occupational
16 therapy assistant for at least three years immediately
17 preceding his appointment. Such appointees shall at
18 all times be holders of valid licenses for the practice of
19 occupational therapy in the state. Except for the mem-
20 bers of the first board appointed from the list submitted
21 by the association, all of such members shall fulfill
22 the requirements for licensure under this article. One
23 member shall be appointed by the governor to represent
24 the public.

25 (b) The board shall, within ninety days after the
26 effective date of this article, be selected as provided in
27 subsection (a). The members of the first board shall
28 serve the following terms: Two members for a term
29 of one year, two members for a term of two years, and
30 one member for a term of three years. At the expiration
31 of the above terms, board members shall be appointed
32 in the same manner as the initial appointment for a
33 period of three years, but no person shall be appointed
34 to serve more than two consecutive terms.

35 (c) Terms shall begin on the first day of the calendar
36 year and end on the last day of the calendar year or
37 until successors are appointed, except for the first mem-
38 bers who shall serve through the last calendar day of
39 the year in which they are appointed before commenc-
40 ing the terms prescribed by this section.

41 (d) When a vacancy occurs on the board, the board
42 shall appoint a member to fill the unexpired
43 term.

44 (e) The governor, after notice and opportunity for
45 hearing by the board, may remove any member of the
46 board for neglect of duty, incompetence, revocation or
47 suspension of the member's license, or other dishonor-
48 able conduct. After such removal, or vacancy due to
49 other reasons, the board shall appoint a successor to
50 the unexpired term. The successor shall meet the quali-

51 fications of board members as established in subsection
52 (a) of this section.

53 (f) The board shall elect from its membership a
54 chairman and secretary-treasurer. A majority of the
55 members of the board shall constitute a quorum and
56 shall meet during the first month of the calendar year
57 to select a chairman. At least one additional meeting
58 shall be held before the end of the calendar year. Further
59 meetings may be convened at the call of the chairman
60 or on the request of any three board members.

61 (g) Members may be reimbursed for all reasonable
62 and necessary expenses actually incurred in the per-
63 formance of their duties. Such members may be paid
64 reasonable compensation not to exceed fifty dollars per
65 day for days spent in performance of their duties.

66 (h) All moneys paid to the board shall be accepted
67 by a person designated by the board and deposited by
68 her/him with the treasurer of the state and credited
69 to an account to be known as the "West Virginia Board
70 of Occupational Therapy." The compensation of and
71 the reimbursement of all reasonable and necessary ex-
72 penses actually incurred by the members of the board
73 and all other costs and expenses incurred by the board in
74 the administration of this article shall be paid from
75 such fund, and no part of the state's general revenue
76 fund shall be expended for such purpose.

§30-28-6. Powers and duties of board.

1 (a) The board shall administer, coordinate and en-
2 force the provisions of this article.

3 (b) The board shall have the responsibility of evaluat-
4 ing the qualifications of applicants for licensure under
5 this article.

6 (c) The board shall determine that the applicant suc-
7 cessfully completed the academic requirements of an
8 educational program in occupational therapy. For an
9 occupational therapist, such a program shall be ac-
10 credited by the American medical association in col-
11 laboration with the American occupational therapy as-

12 sociation. For an occupational therapy assistant, such
13 program shall be approved by the American occupa-
14 tional therapy association.

15 (d) The board shall prepare or approve all examina-
16 tions of applicants for license at least twice a year,
17 determine the qualifications and authorize the issuance
18 of licenses to qualified occupational therapists and oc-
19 cupational therapy assistants; renew, suspend or revoke
20 licenses in the manner provided.

21 (e) The board shall appoint representatives or contract
22 with qualified testing services to conduct or supervise
23 examinations and designate time and place for examining
24 applicants.

25 (f) The board shall establish standards for the con-
26 tinuing professional competence of persons subject to
27 this article.

28 (g) The board shall establish fees and maintain a regis-
29 ter of all persons holding a license and a record of all in-
30 spections made.

31 (h) The board shall conduct such hearings and keep
32 such records and minutes as are necessary to carry out
33 its functions. It shall provide reasonable public notice
34 to the appropriate persons of the time and place of
35 all hearings authorized under this article in such a
36 manner and at such times as it may determine by its
37 rules and regulations.

38 (i) The board shall adopt rules and regulations re-
39 lating to professional conduct to carry out the policy of
40 this article including, but not limited to, regulations re-
41 lating to professional licensure and the establishment of
42 ethical standards of practice. Any such rules and regula-
43 tions so adopted shall be subject to the provisions of chap-
44 ter twenty-nine-a of this code.

45 (j) The board may investigate complaints and al-
46 legations concerning the violation of provisions of this
47 article and may examine witnesses in connection with
48 these investigations.

49 (k) The board shall make an annual report to the
50 governor, which report shall contain an account of duties
51 performed, actions taken and appropriate recommenda-
52 tions.

53 (l) The board is empowered to prescribe and publish
54 reasonable application fees. Such fees shall be com-
55 mensurate with the cost of fulfilling the duties of the
56 board as defined by this article.

§30-28-7. License required; persons and practices not affected.

1 (a) No person may hold himself out as an occupa-
2 tional therapist or an occupational therapy assistant in
3 this state unless he is licensed in accordance with the
4 provisions of this article.

5 (b) Nothing in this article shall be construed as
6 preventing or restricting the practice, services or ac-
7 tivities of:

8 (1) Any person licensed under any other law of this
9 state, including physicians, nurses, clinical psychologists,
10 speech pathologists and audiologists, dentists and physical
11 therapists, from engaging in the profession or occupation
12 for which he is licensed;

13 (2) Any person employed as an occupational thera-
14 pist or an occupational therapy assistant by the govern-
15 ment of the United States, if such a person provides
16 occupational therapy solely under the direction or control
17 of the organization by which he is employed;

18 (3) Any person pursuing a course of study leading
19 to a degree or certificate in occupational therapy in an
20 educational program which is accredited by the Ameri-
21 can occupational therapy association in collaboration
22 with the American medical association, or in an educa-
23 tional program approved by the American occupational
24 therapy association, and if such person is designated
25 by a title which clearly indicates his status as a student
26 or trainee;

27 (4) Any person fulfilling the supervised field work

28 experience, if such activities and services constitute a
29 part of the experience necessary to meet the require-
30 ments of section eight of this article;

31 (5) Any person performing occupational therapy ser-
32 vices in this state not licensed under this article, if
33 such services are performed for no more than ninety
34 consecutive days a calendar year in association with an
35 occupational therapist licensed under this article, if such
36 person meets the qualification for license under this
37 article, except for the qualifying examination; or

38 (6) Any person performing occupational therapy
39 services in this state not licensed under this article, if
40 such services are performed for no more than one
41 hundred eighty consecutive calendar days in a calendar
42 year and if:

43 (A) Such a person is licensed under the law of an-
44 other state which has licensure requirements equivalent
45 to the requirements of this article; or

46 (B) Such a person meets the requirements for certifi-
47 cation as an occupational therapist registered (OTR) or
48 a certified occupational therapy assistant (COTA) estab-
49 lished by the American occupational therapy association.

§30-28-8. Qualifications of applicants for license.

1 (a) To be eligible for a license to engage in the practice
2 of occupational therapy, the applicant must:

3 (1) Be of good moral character;

4 (2) Have successfully completed the academic re-
5 quirements of an educational program in occupational
6 therapy recognized by the board, with concentration in
7 biologic or physical science, psychology and sociology,
8 and with education in selected manual skills. For an
9 occupational therapist, such a program shall be ac-
10 credited by the American medical association in col-
11 laboration with the American occupational therapy as-
12 sociation. For an occupational therapy assistant, such
13 program shall be approved by the American occupational
14 therapy association;

15 (3) Have successfully completed a period of supervised
16 field work experience at a recognized educational insti-
17 tution or a training program approved by the educa-
18 tional institution where she or he met the academic
19 requirements. For an occupational therapist, a minimum
20 of six months of supervised field work experience is
21 required. For an occupational therapy assistant, a mini-
22 mum of two months of supervised field work experience is
23 required; and

24 (4) Have passed an examination conducted by the
25 board as provided in section six of this article.

26 (b) An applicant who has practiced as an occupational
27 therapy assistant for four years and has successfully
28 completed the supervised field work experience required
29 in subdivision (3) of subsection (a) may take the ex-
30 amination to be licensed as an occupational therapist
31 without meeting the educational requirements for oc-
32 cupational therapists made otherwise applicable under
33 subdivision (2) of subsection (a).

§30-28-9. Examination.

1 (a) A person applying for licensure shall demonstrate
2 her or his eligibility in accordance with the require-
3 ments of section eight of this article, and shall make
4 application for examination to the board at least thirty
5 days prior to the date of examination upon a form and
6 in such a manner as the board shall prescribe. Such
7 application shall be accompanied by the fee prescribed
8 by section fifteen of this article, which fee shall not be
9 refunded. A person who fails an examination may make
10 reapplication three times for reexamination accompanied
11 by the prescribed fee.

12 (b) Each applicant for licensure under this article
13 shall be examined by the board in written examination
14 to test his knowledge of the basic and clinical sciences
15 relating to occupational therapy, and occupational therapy
16 theory and practice, including the professional skills and
17 judgment of the applicant in the utilization of occupa-
18 tional therapy techniques and methods, and such other

19 subjects as the board may deem useful to determine the
20 fitness for practice of the applicant.

21 (c) Applicants for licensure shall be examined at a
22 time and place and under such supervision as the board
23 may determine. Examinations shall be given at least
24 twice each year at such places as designated by the
25 board, and the board shall give reasonable statewide
26 public notice of such examinations in accordance with
27 its rules at least sixty days prior to their administra-
28 tion, and shall notify by mail all applicants for
29 examination of the time and place of their adminis-
30 tration.

31 (d) Applicants may obtain their examination scores
32 and may review their papers in accordance with such
33 rules as the board may establish.

§30-28-10. Waiver of requirements for licensure.

1 (a) The board shall waive the examination and
2 grant a license to any person certified prior to the effec-
3 tive date of this article as an occupational therapist
4 registered (OTR) or as a certified occupational therapy
5 assistant (COTA) by the American occupational therapy
6 association. The board shall waive the examination and
7 grant a license to any person so certified after the effec-
8 tive date of this article, if the board considers the
9 requirements for such certification to be equivalent to
10 the requirements for licensure in this article.

11 (b) The board may waive the examination and grant
12 a license to any applicant who shall present proof of
13 current licensure as an occupational therapist or an
14 occupational therapy assistant in another state, the Dis-
15 trict of Columbia or territory of the United States,
16 which requires standards for licensure considered by the
17 board to be equivalent to the requirements for licensure
18 in this article.

§30-28-11. Issuance of a license.

1 (a) The board shall issue a license to any person
2 who meets the requirements of this article upon pay-
3 ment of the license fee prescribed.

4 (b) The board shall issue a limited permit to per-
5 sons who have completed the education and experience
6 requirements of this article. This permit shall allow
7 the person to practice occupational therapy under the
8 supervision of an occupational therapist who holds a
9 current license in this state and shall be valid until
10 the date on which the results of the next qualifying
11 examination have been made public. This limited per-
12 mit shall not be renewed if the applicant has failed the
13 examination.

14 (c) The board shall issue a limited permit to an
15 occupational therapist or an occupational therapy assis-
16 tant who has graduated from an occupational therapy
17 curriculum of a foreign country or of a territory or
18 possession of the United States. Such program shall be
19 equivalent to academic requirements for graduates of
20 occupational therapy programs in the United States and
21 shall be satisfactory to the board. This permit shall
22 allow the person to practice under the supervision of
23 a licensed occupational therapist. A limited permit
24 shall be valid for one year at which time the holder
25 shall apply to the board for licensure. A limited permit
26 shall become null and void if the holder fails to pass
27 a licensing examination.

28 (d) Any person who is issued a license as an occu-
29 pational therapist under the terms of this article may
30 use the words "occupational therapist registered," "li-
31 censed occupational therapist," or "occupational thera-
32 pist," or he may use the letters "O.T.R.," "L.O.T.," or
33 "O.T.," in connection with his name or place of business
34 to denote registration hereunder.

35 (e) Any person who is issued a license as an occu-
36 pational therapy assistant under the terms of this article
37 may use the words "occupational therapy assistant,"
38 "licensed occupational therapy assistant," or "certified
39 occupational therapy assistant" or may use the letters
40 "O.T.A.," "L.O.T.A.," or "C.O.T.A.," in connection with
41 his name or place of business to denote his registration
42 hereunder.

43 (f) The board shall prescribe the form of licenses
44 and each license shall be conspicuously displayed by
45 the licensee at his principal place of practice, or, in the
46 case of a license to act as an occupational therapy assis-
47 tant, at his place of employment.

§30-28-12. Renewal of license.

1 (a) All licenses under this article shall be subject to
2 renewal and shall expire unless renewed in the manner
3 prescribed by the rules and regulations of the board
4 upon the payment of a renewal fee. The board may
5 establish additional requirements for license renewal
6 which provide evidence of continued competency. The
7 board may provide for late renewal of a license upon
8 payment of a late renewal fee. Any license which has
9 not been restored within five years following its expira-
10 tion may not be renewed, restored or reissued thereafter.
11 The holder of such a canceled license may apply for
12 and obtain a valid license only upon compliance with all
13 relevant requirements for issuance of a new license.

14 (b) A suspended license is subject to expiration and
15 may be renewed as provided in this section, but such
16 renewal shall not entitle the licensee, while the license
17 remains suspended and until it is reinstated, to engage
18 in the licensed activity or in other conduct or activity
19 in violation of the order or judgment by which the
20 license was suspended. If a license revoked on disci-
21 plinary grounds is reinstated, the licensee, as a condi-
22 tion of reinstatement, shall pay the renewal fee and
23 any late fee that may be applicable.

**§30-28-13. Suspension and revocation of license; refusal to
renew.**

1 (a) The board shall, after notice and opportunity for
2 hearing, have the power to deny or refuse to renew,
3 suspend or revoke the license of, or impose probationary
4 conditions upon, any licensee who has been guilty of
5 unprofessional conduct which has endangered or is likely
6 to endanger the health, welfare or safety of the public.
7 Such unprofessional conduct includes:

- 8 (1) Obtaining a license by fraud, misrepresentation
9 or concealment of material facts;
- 10 (2) Being convicted of a felony or other crime involving
11 moral turpitude;
- 12 (3) Being guilty of unprofessional conduct as defined
13 by the rules established by the board;
- 14 (4) Violating any lawful order, rule or regulation
15 rendered or adopted by the board; or
- 16 (5) Violating any provision of this article.
- 17 (b) Such denial, refusal to renew, suspension, revo-
18 cation or imposition of probationary condition upon a
19 license may be ordered by the board in a decision made
20 after a hearing in the manner provided by the rules
21 adopted by the board. One year from the date of the
22 revocation of a license, application may be made to the
23 board for reinstatement. The board shall have discretion
24 to accept or reject an application for reinstatement and
25 shall be required to hold a hearing to consider such re-
26 instatement.

§30-28-14. Procedures for hearing.

- 1 (a) Whenever the board shall deny an application for
2 any original or renewal license or any application for a
3 temporary permit or shall suspend or revoke any license
4 or temporary permit it shall make and enter an order
5 to that effect and serve a copy thereof on the applicant
6 or licensee, as the case may be, by certified mail, return
7 receipt requested. Such order shall state the grounds for
8 the action taken and shall require that any license or
9 temporary permit suspended or revoked thereby shall be
10 returned to the board by the holder within twenty days
11 after receipt of said copy of said order.
- 12 (b) Any person adversely affected by any such order
13 shall be entitled to a hearing thereon as to all issues not
14 excluded from the definition of a "contested case" as set
15 forth in article one, chapter twenty-nine-a of this code if,
16 within twenty days after receipt of a copy thereof, he
17 files with the board a written demand for such hearing.

18 A demand for hearing shall operate automatically to
19 stay or suspend the execution of any order suspending or
20 revoking a license or temporary permit or denying an
21 application for a renewal of license. The board may re-
22 quire the person demanding such hearing to give reason-
23 able security for the costs thereof, and, if such person
24 does not substantially prevail at such hearing, such costs
25 shall be assessed against him and may be collected by a
26 civil action or other proper remedy.

27 (c) Upon receipt of a written demand for such hear-
28 ing, the board shall set time and place thereof not less
29 than ten nor more than thirty days thereafter. The
30 person demanding the hearing may be granted one con-
31 tinuance as a matter of right and further continuances
32 for good cause shown.

33 (d) All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code shall apply to and
35 govern the hearing and the administrative procedures in
36 connection with and following such hearing, with like
37 effect as if the provisions of said article five were set
38 forth in this subsection.

39 (e) Any such hearing shall be conducted by a quorum
40 of the board. For the purpose of conducting any such
41 hearing any member of the board may issue subpoenas
42 and subpoenas duces tecum which shall be issued and
43 served within the time and for the fees and shall be
44 enforced, as specified in section one, article five of chapter
45 twenty-nine-a of this code and all of the said section
46 one provisions dealing with subpoenas and subpoenas
47 duces tecum shall apply to subpoenas and subpoenas
48 duces tecum issued for the purpose of a hearing here-
49 under.

50 (f) At any such hearing the person who demanded
51 the same may represent himself or be represented by an
52 attorney admitted to practice law in this state. Upon re-
53 quest by the board, it shall be represented at any such
54 hearing by the attorney general or his assistants without
55 additional compensation.

56 (g) After any such hearing and consideration of all of
57 the testimony, evidence and record in the case, the board
58 shall render its decision in writing. The written decision
59 of the board shall be accompanied by findings of fact and
60 conclusions of law as specified in section three, article
61 five, chapter twenty-nine-a of this code, and a copy of
62 such decision and accompanying findings and conclusions
63 shall be served by certified mail, return receipt requested,
64 upon the person demanding such hearing, and his attor-
65 ney of record, if any.

66 (h) The decision of the board shall be final unless
67 reversed, vacated or modified upon judicial review
68 thereof in accordance with the provisions of section six-
69 teen of this article.

§30-28-15. Fees.

1 The board shall prescribe and publish, in the manner
2 established by its rules, fees in amounts determined by
3 the board for the following purposes:

- 4 (a) Application for examination;
- 5 (b) Initial license fee;
- 6 (c) Renewal of license fee; and
- 7 (d) Late renewal fee.

8 Such fees shall be commensurate with the cost of
9 fulfilling the duties of the board as defined by this
10 article.

§30-28-16. Judicial review; appeal to supreme court of appeals; legal representation for board.

1 Any person adversely affected by a decision of the
2 board rendered after a hearing held in accordance with
3 the provisions of section fourteen of this article shall
4 be entitled to judicial review thereof. All of the per-
5 tinent provisions of section four, article five, chapter
6 twenty-nine-a of this code shall apply to and govern
7 such judicial review with like effect as if the provisions
8 of said section four were set forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this
13 code.

14 Legal counsel and services for the board in all appeal
15 proceedings in any circuit court and the supreme court of
16 appeals shall be provided by the attorney general
17 or his assistants and in any circuit court by the prose-
18 cuting attorney of the county as well, all without addi-
19 tional compensation.

§30-28-17. Penalties.

1 (a) Any person who violates any provisions of this
2 article shall be guilty of a misdemeanor, and, upon con-
3 viction thereof, shall be fined not less than fifty dollars
4 and not more than five hundred dollars. A license held by
5 any person convicted under this section shall be forfeited
6 and revoked forthwith for one year from the date
7 of such conviction.

8 (b) It is unlawful for any person who is not reg-
9 istered under this article as an occupational therapist
10 or as an occupational therapy assistant whose regis-
11 tration has been suspended or revoked to use, in con-
12 nection with his name or place of business, the words
13 "occupational therapist," "licensed occupational thera-
14 pist," "occupational therapist registered," "occupational
15 therapy assistant," "licensed occupational therapy assist-
16 ant," "certified occupational therapy assistant," or "oc-
17 cupational therapy aide," or the letters "O.T.," "L.O.T.,"
18 "O.T.R.," "O.T.A.," "L.O.T.A.," "C.O.T.A.," or any other
19 words, letters, abbreviations or insignia indicating or
20 implying that he is an occupational therapist or an oc-
21 cupational therapy assistant, or to show in any way, oral-
22 ly, in writing, in print, or by sign, directly or by implica-
23 tion, or to represent himself as an occupational therapist,
24 occupational therapy assistant or occupational therapy
25 aide.

§30-28-18. Actions to enjoin violations.

1 Whenever it appears to the board that any person
2 has been or is violating or is about to violate any pro-
3 vision of this article, any reasonable rule and regula-
4 tion promulgated hereunder or any order or final decision
5 of the board, the board may apply in the name of the
6 state to the circuit court of the county in which the
7 violation or violations of any part thereof has occurred,
8 is occurring, or is about to occur, or to the judge thereof
9 in vacation, for an injunction against such person and
10 any other persons who have been, are or are about to
11 be, involved in any practices, acts or omissions, so in
12 violation, enjoining such person or persons from any
13 such violation or violations. Such application may be
14 made and prosecuted to conclusion whether or not any
15 such violation or violations have resulted or shall re-
16 sult in prosecution or conviction under the provisions of
17 section seventeen of this article.

18 Upon application by the board, the circuit courts of
19 this state may by mandatory or prohibitory injunction
20 compel compliance with the provisions of this article,
21 the reasonable rules and regulations promulgated here-
22 under and all orders and final decisions of the board.
23 The court may issue a temporary injunction in any case
24 pending a decision on the merits of any application
25 filed.

26 The judgment of the circuit court upon any applica-
27 tion permitted by the provisions of this section shall be
28 final unless reversed, vacated or modified on appeal
29 to the supreme court of appeals. Any such appeal shall
30 be sought in the manner and within the time provided
31 by law for appeals from circuit courts in other civil
32 actions.

33 The board shall be represented in all such proceedings
34 by the attorney general or his assistants and in such
35 proceedings in the circuit court by the prosecuting at-
36 torneys of the several counties as well, all without
37 additional compensation.

CHAPTER 88**(H. B. 1603—By Mr. Blackwell and Mr. Teets)**

[Passed March 8, 1978; in effect July 1, 1978. 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.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.**§15-1B-16. Pay and allowances.**

1 (a) Pay and allowances for officers and men of the
2 national guard for drill, encampment or other duty for train-
3 ing prescribed or ordered by the federal government, shall be
4 such as are provided by the laws of the United States.

5 (b) Officers and men of the national guard in active
6 service of the state shall receive the same pay and allowances,
7 in accordance with their rank and service, as are prescribed
8 for the armed forces of the United States: *Provided*, That
9 no member of the national guard shall receive base pay of
10 less than forty dollars per day while he is in active service of
11 the state.

12 (c) Notwithstanding any of the provisions of this article,
13 members of the national guard, may, with their consent, per-
14 form without pay, or without pay and allowances any duties
15 prescribed by section thirteen of this article pursuant to com-
16 petent orders therefor: *Provided*, That necessary expense may
17 be furnished such personnel within the discretion of the
18 adjutant general.

CHAPTER 89

(S. B. 485—By Mr. Brotherton, Mr. President)

(Passed March 12, 1978; in effect July 1, 1978. Approved by the Governor.)

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing salaries of members of the department of public safety; excluding members from wage and hour law; setting forth legislative findings relating to such exclusion; providing for supplemental pay in lieu of overtime; and requiring rule or regulation setting forth eligibility for supplemental pay.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual sal-
2 aries pursuant to appropriation by the Legislature, pay-
3 able at least monthly as follows:

4 Any lieutenant colonel shall receive an annual salary of
5 twenty thousand five hundred eighty dollars; any major
6 shall receive an annual salary of eighteen thousand six
7 hundred twenty-four dollars; any captain shall receive
8 an annual salary of seventeen thousand one hundred
9 twenty-four dollars; any lieutenant shall receive an an-
10 nual salary of sixteen thousand eighty dollars; any master
11 sergeant or first sergeant shall receive an annual salary of
12 fifteen thousand eighty-four dollars; any sergeant shall
13 receive an annual salary of fourteen thousand three hun-
14 dred fifty-two dollars; any corporal shall receive an an-
15 nual salary of thirteen thousand five hundred eighty-four

16 dollars; any trooper first class shall receive an annual
17 salary of twelve thousand seven hundred fifty-six dollars;
18 and any newly enlisted trooper shall receive a salary of
19 nine hundred twenty-three dollars monthly during the
20 period of his basic training, and upon the satisfactory
21 completion of such training and assignment to active duty
22 each such trooper shall receive, during the remainder of
23 his first year's service, a salary of nine hundred ninety-
24 eight dollars monthly. During the second year of his ser-
25 vice in the department each trooper shall receive an an-
26 nual salary of twelve thousand two hundred fifty-two dol-
27 lars; during the third year of his service each such trooper
28 shall receive an annual salary of twelve thousand four
29 hundred thirty-two dollars; and during the fourth year
30 and fifth year of such trooper's service and for each year
31 thereafter he shall receive an annual salary of twelve
32 thousand six hundred dollars. Each member of the de-
33 partment whose salary is specified herein shall receive
34 and be entitled to an increase in salary over that herein-
35 before set forth, for grade in rank, based on length of
36 service, including that heretofore and hereafter served
37 with the department, as follows: At the end of five years
38 of service with the department, such member shall
39 receive a salary increase of three hundred dollars to be
40 effective during his next three years of service and a like
41 increase at three-year intervals thereafter, with such in-
42 creases to be cumulative.

43 In applying the foregoing salary schedule where salary
44 increases are provided for length of service, members of
45 the department in service at the time this article becomes
46 effective shall be given credit for prior service and shall
47 be paid such salaries as the same length of service will
48 entitle them to receive under the provisions hereof.

49 The Legislature finds and declares that there is litigation
50 pending in the circuit court of Kanawha County on the
51 question whether members of the department of public
52 safety are covered by the provisions of the state wage
53 and hour law, article five-c, chapter twenty-one of this
54 code. The Legislature further finds and declares that be-
55 cause of the unique duties of members of the department,

56 it is not appropriate to apply said wage and hour provi-
57 sions to them. Accordingly, members of the department of
58 public safety are hereby excluded from the provisions of
59 said wage and hour law. The express exclusion hereby
60 enacted shall not be construed as any indication that such
61 members were or were not heretofore covered by said
62 wage and hour law.

63 In lieu of any overtime pay they might otherwise have
64 received under the wage and hour law, and in addition to
65 their salaries and increases for length of service, mem-
66 bers who have completed basic training may receive
67 supplemental pay as hereinafter provided.

68 The superintendent shall, within thirty days after the
69 effective date hereof, promulgate a rule or regulation to
70 establish the number of hours per month which shall
71 constitute the standard work month for the members of
72 the department. Such rule or regulation shall further
73 establish, on a graduated hourly basis, the criteria for
74 receipt of a portion or all of such supplemental payment
75 when hours are worked in excess of said standard work
76 month. Such rule or regulation shall be promulgated
77 pursuant to the provisions of chapter twenty-nine-a of
78 the code. The superintendent shall certify monthly to
79 the department's payroll officer the names of those mem-
80 bers who have worked in excess of the standard work
81 month and the amount of their entitlement to supple-
82 mental payment.

83 The supplemental payment shall be in an amount equal
84 to one and one-half percent of the annual salary of a
85 trooper during his second year of service, not to exceed
86 one hundred seventy-five dollars monthly. The superin-
87 tendent and civilian employees of the department shall
88 not be eligible for any such supplemental payments.

89 Each member of the department, except the superin-
90 tendent and civilian employees, shall execute, before en-
91 tering upon the discharge of his duties, a bond with se-
92 curity in the sum of five thousand dollars payable to the
93 state of West Virginia, conditioned upon the faithful
94 performance of his duties, and such bond shall be ap-

95 proved as to form by the attorney general and to suffi-
96 ciency by the governor.

97 Any member of the department who is called to per-
98 form active duty for training or inactive duty training in
99 the national guard or any reserve component of the armed
100 forces of the United States annually shall be granted upon
101 request leave time not to exceed thirty days for the pur-
102 pose of performing such active duty for training or in-
103 active duty training, and the time so granted shall not be
104 deducted from any leave accumulated as a member of the
105 department.

CHAPTER 90

(S. B. 394—By Mr. Brotherton, Mr. President)

[Passed February 28, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to the authority of the public service commission to enter and inspect railroad property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1a. Authority of commission to enter and inspect railroad property.

1 The commission or its duly authorized representatives
2 are hereby authorized and empowered to enter and in-
3 spect any property, premise or place, owned or operated
4 by a railroad, whether fixed facilities or rolling stock,

5 including, but not limited to, locomotives, cars and
6 cabooses, stationary or in motion, at any reasonable time
7 for the purpose of ascertaining the state of compliance
8 with this article and rules and regulations in force pur-
9 suant thereto. No person shall refuse entry or access to
10 the commission or any authorized representative of the
11 commission who requests entry for purposes of inspec-
12 tion, and who presents appropriate credentials; nor shall
13 any person obstruct, hamper or interfere with any such
14 inspection.

CHAPTER 91

(Com. Sub. for H. B. 1559—By Mr. Donley and Mr. Branda)

[Passed March 9, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to requiring use of domestic aluminum, glass and steel in all public works projects; exceptions to requirements; defining terms; requiring inclusion of contract provision for use of domestic aluminum, glass and steel in all public works contracts; prohibiting payments to contractors not complying with such provision; and authorizing recovery of payments made to such contractors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. DOMESTIC ALUMINUM, GLASS AND STEEL IN PUBLIC WORKS PROJECTS.

§5-19-1. Definitions.

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

§5-19-3. Contract payments; recovery in cases of violation of article.

§5-19-1. Definitions.

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

3 "Public agency" means the state of West Virginia, counties,
4 municipalities, towns, boards of education, public service dis-
5 tricts and other political subdivisions of this state.

6 "Public works" includes roads, highways, streets, bridges,
7 sidewalks, sewage systems, buildings, engineering and archi-
8 tectural works, and any other structure, facility or improve-
9 ment constructed or undertaken by a public agency.

10 "Aluminum, glass and steel products" means products
11 rolled, formed, shaped, drawn, extruded, forged, cast, fabri-
12 cated, or otherwise similarly processed from aluminum, glass
13 and steel; "domestic aluminum, glass and steel products"
14 means aluminum, glass and steel products made in the United
15 States.

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

1 (a) Every public agency shall require that every contract
2 and subcontract for the construction, reconstruction, alteration,
3 repair, improvement or maintenance of public works contain
4 a provision that, if any aluminum, glass or steel products are
5 to be supplied in the performance of the contract, or sub-
6 contract, only domestic aluminum, glass or steel products shall
7 be supplied unless the chief executive or governing body of
8 such agency, as the case may be, determines after the receipt
9 of offers or bids, that the cost of domestic aluminum, glass or
10 steel products is unreasonable or that domestic aluminum,
11 glass or steel products are not produced in sufficient quantities
12 to meet the contract requirements: *Provided*, That this article
13 does not apply to any public works contract awarded in an
14 amount less than fifty thousand dollars.

15 (b) The offered or bid price of domestic aluminum, glass
16 or steel products is not unreasonable unless it is more than
17 twenty percent higher than the offered or bid price of foreign-
18 made aluminum, glass or steel products (including any ap-
19 plicable duty): *Provided*, That if the aluminum, glass or steel

20 products to be supplied are produced in a "substantial labor
21 surplus area" as determined by the United States department
22 of labor, the offered or bid price of domestic aluminum, glass
23 or steel products is not unreasonable unless it is more than
24 thirty percent higher than the offered or bid price of foreign-
25 made aluminum, glass or steel products (including any ap-
26 plicable duty).

§5-19-3. Contract payments; recovery in cases of violation of article.

1 A public agency may not authorize or make any payments
2 to a contractor under a contract which contains or should
3 contain the provision required by section two of this article
4 unless such contractor has fully complied with such pro-
5 vision. Prior to such payment, the public agency shall re-
6 quire sworn certificates of compliance from all contractors,
7 subcontractors and suppliers whose work involved the sup-
8 plying of aluminum, glass or steel products. Payments made
9 by a public agency to any contractor who did not comply with
10 this article may be recovered by such agency.

CHAPTER 92

(S. B. 518—By Mr. Palumbo)

[Passed March 11, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nine, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article nine by adding thereto a new section, designated section twenty-six-a; and to amend and reenact article three, chapter fifty-six of said code by adding thereto a new section, designated section thirteen-a, all relating to service of process or notice on domestic limited partnerships and foreign limited partnerships; providing for certificate of limited partnership to be filed in office of secretary of state naming person authorized to accept ser-

vice; providing for appointment of attorney-in-fact; providing for secretary of state to be constituted attorney-in-fact for limited partnerships; providing for process against, or notice to, limited partnerships; and providing for service by publication on foreign limited partnerships in same manner as foreign corporations.

Be it enacted by the Legislature of West Virginia:

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

Chapter

47. Regulation of Trade.

56. Pleading and Practice.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-2. Formation; contents and recordation of certificate.

§47-9-26a. Secretary of state constituted attorney-in-fact for all limited partnerships; 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.

§47-9-2. Formation; contents and recordation of certificate.

- 1 (1) Two or more persons desiring to form a limited
- 2 partnership shall:
- 3 (a) Sign and swear to a certificate, which shall state:
- 4 I. The name of the partnership;
- 5 II. The character of the business;
- 6 III. The location of the principal place of business;
- 7 IV. The name and place of residence of each member,
- 8 general and limited partners being respectively desig-
- 9 nated, and the name and address of the person to whom
- 10 shall be sent notice or process served upon, or service of

11 which is accepted by the secretary of state, if such person
12 has been appointed by the limited partnership;

13 V. The term for which the partnership is to exist;

14 VI. The amount of cash and a description of and the
15 agreed value of the other property contributed by each
16 limited partner;

17 VII. The additional contributions, if any, agreed to be
18 made by each limited partner and the times at which or
19 events on the happenings of which they shall be made;

20 VIII. The time, if agreed upon, when the contribution
21 of each limited partner is to be returned;

22 IX. The share of the profits or the other compensation
23 by way of income which each limited partner shall receive
24 by reason of his contribution;

25 X. The right, if given, of a limited partner to substitute
26 an assignee as contributor in his place, and the terms and
27 conditions of the substitution;

28 XI. The right, if given, of the partners to admit addi-
29 tional limited partners;

30 XII. The right, if given, of one or more of the limited
31 partners to priority over other limited partners, as to
32 contributions or as to compensation by way of income,
33 and the nature of such priority;

34 XIII. The right, if given, of the remaining general part-
35 ner or partners to continue the business on the death,
36 retirement or insanity of a general partner; and

37 XIV. The right, if given, of a limited partner to demand
38 and receive property other than cash in return for his
39 contribution.

40 (b) File for record the certificate in the office of the
41 clerk of the county commission of each county in which
42 such partnership has a place of business and in the office
43 of the secretary of state.

44 (2) A limited partnership is formed if there has been

45 substantial compliance in good faith with the require-
46 ments of subsection (1) of this section.

§47-9-26a. Secretary of state constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

1 The secretary of state is hereby constituted the at-
2 torney-in-fact for and on behalf of every limited part-
3 nership created by virtue of the laws of this state and
4 every foreign limited partnership authorized to conduct
5 affairs or do or transact business herein pursuant to the
6 provisions of this article, with authority to accept service
7 of notice and process on behalf of every such limited
8 partnership and upon whom service of notice and process
9 may be made in this state for and upon every such
10 limited partnership. No act of such limited partnership
11 appointing the secretary of state such attorney-in-fact
12 shall be necessary. Immediately after being served with
13 or accepting any such process or notice, of which process
14 or notice two copies for each defendant shall be furnished
15 the secretary of state with the original notice or process,
16 together with a fee of two dollars, the secretary of state
17 shall file in his office a copy of such process or notice,
18 with a note thereon endorsed of the time of service, or
19 acceptance, as the case may be, and transmit one copy
20 of such process or notice by registered or certified mail,
21 return receipt requested, to the person to whom notice
22 and process shall be sent, whose name and address were
23 last furnished to the state officer at the time authorized
24 by statute to accept service of notice and process and
25 upon whom notice and process may be served; and if
26 no such person has been named, to the principal office
27 of the limited partnership at the address last furnished
28 to the state officer at the time authorized by statute
29 to accept service of process and upon whom process may
30 be served, as required by law. No process or notice shall
31 be served on the secretary of state or accepted by him

32 less than ten days before the return day thereof. Such
33 limited partnership shall pay the annual fee prescribed
34 by article twelve, chapter eleven of this code for the
35 services of the secretary of state as its attorney-in-fact.

36 Any foreign limited partnership which shall conduct
37 affairs or do or transact business in this state without
38 having been authorized so to do pursuant to the pro-
39 visions of this article shall be conclusively presumed
40 to have appointed the secretary of state as its attorney-
41 in-fact with authority to accept service of notice and
42 process on behalf of such limited partnership and upon
43 whom service of notice and process may be made in
44 this state for and upon every such limited partnership
45 in any action or proceeding described in the next follow-
46 ing paragraph of this section. No act of such limited
47 partnership appointing the secretary of state as such
48 attorney-in-fact shall be necessary. Immediately after
49 being served with or accepting any such process or
50 notice, of which process or notice two copies for each
51 defendant shall be furnished the secretary of state with
52 the original notice or process, together with a fee of two
53 dollars, the secretary of state shall file in his office a
54 copy of such process or notice, with a note thereon
55 endorsed of the time of service or acceptance, as the
56 case may be, and transmit one copy of such process or
57 notice by registered or certified mail, return receipt re-
58 quested, to such limited partnership at the address of
59 its principal office, which address shall be stated in such
60 process or notice. Such service or acceptance of such
61 process or notice shall be sufficient if such return receipt
62 shall be signed by an agent or employee of such limited
63 partnership, or the registered or certified mail so sent
64 by the secretary of state is refused by the addressee and
65 the registered or certified mail is returned to the secre-
66 tary of state, or to his office, showing thereon the stamp
67 of the United States postal service that delivery thereof
68 has been refused, and such return receipt or registered or
69 certified mail is appended to the original process or
70 notice and filed therewith in the clerk's office of
71 the court from which such process or notice was

72 issued. No process or notice shall be served on the
73 secretary of state or accepted by him less than ten
74 days before the return date thereof. The court may order
75 such continuances as may be reasonable to afford each
76 defendant opportunity to defend the action or pro-
77 ceedings.

78 For the purpose of this section, a foreign limited part-
79 nership not authorized to conduct affairs or do or transact
80 business in this state pursuant to the provisions of this
81 article shall nevertheless be deemed to be conducting
82 affairs or doing or transacting business herein (a) if
83 such limited partnership makes a contract to be per-
84 formed, in whole or in part, by any party thereto, in
85 this state, (b) if such limited partnership commits a
86 tort in whole or in part in this state, or (c) if such
87 limited partnership manufactures, sells, offers for sale
88 or supplies any product in a defective condition and such
89 product causes injury to any person or property within
90 this state notwithstanding the fact that such limited
91 partnership had no agents, servants or employees or
92 contacts within this state at the time of said injury. The
93 making of such contract, the committing of such tort
94 or the manufacture or sale, offer of sale or supply of
95 such defective product as hereinabove described shall
96 be deemed to be the agreement of such limited partner-
97 ship that any notice or process served upon, or accepted
98 by, the secretary of state pursuant to the next preceding
99 paragraph of this section in any action or proceeding
100 against such limited partnership arising from, or growing
101 out of, such contract, tort, or manufacture or sale, offer
102 of sale or supply of such defective product shall be of
103 the same legal force and validity as process duly served
104 on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-13a. Service of process or notice on domestic and foreign limited partnerships; service by publication.

1 Process against, or notice to, a domestic limited part-
2 nership or a foreign limited partnership may be served on

3 any general partner, or on the secretary of state as statu-
4 tory attorney-in-fact of such limited partnership as pro-
5 vided in section twenty-six-a of article nine, chapter
6 forty-seven of this code, or on any other person appointed
7 by it to accept service of process in its behalf, or on any
8 agent of such limited partnership. Any foreign limited
9 partnership for which no statutory attorney-in-fact, gen-
10 eral partner or agent is found in this state upon whom
11 service may be had, shall be subject to service by publica-
12 tion under this article in the same manner and upon the
13 same conditions and requirements as are foreign corpora-
14 tions for which no statutory attorneys-in-fact, officers,
15 directors or agents are found in this state upon whom
16 service may be had.

CHAPTER 93

(S. B. 373—By Mr. Brotherton, Mr. President)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Better Highways Amendment of 1973, in an amount not exceeding one hundred million dollars and in several issuances, none of which may exceed fifty million dollars, during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-nine or thereafter, for the sole purpose of raising funds for the building, construction, reconstruction, improving, upgrading and completion of state roads and highways and for the replacement and improvement of bridges as provided for by the constitution and the laws enacted thereunder; requiring notification and report to be given to the president of the Senate and the speaker of the House of Delegates of specific projects and amounts thereof awarded; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; allocating proceeds in certain amounts; permitting the commissioner of the department

of highways to determine the uses of the total proceeds from bonds issued; 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; stating what moneys shall be paid into the state road fund; providing for the disposition and investment of the state road fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing for annual accountability status report; 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 or to obtain financial advisor assistance; 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 road fund 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 ROAD BONDS.

- §1. Road bonds; amount; purposes; when may issue.
- §2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
- §3. Form of bond.
- §4. Form of coupon.
- §5. Listing by auditor.
- §6. State road fund sources used to pay bonds and interest; investment of remainder.
- §7. Covenants of state.
- §8. Sale by governor; minimum price.
- §9. Proceeds paid into separate account in state road fund; expenditures; investment; annual accountability status report.
- §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. Road bonds; amount; purposes; when may issue.

1 Bonds of the state of West Virginia, under authority of
2 the Better Highways Amendment of 1973, of the par value
3 not to exceed one hundred million dollars during the fiscal
4 year ending the thirtieth day of June, one thousand nine
5 hundred seventy-nine or thereafter, are hereby authorized
6 to be issued and sold for the sole purpose of raising funds
7 for the building, construction, reconstruction, improving,
8 upgrading and completion of state roads and highways
9 and for the replacement and improvement of bridges as
10 provided for by the constitution and the laws enacted
11 thereunder and such funds shall be designated for the
12 following purposes in the following amounts:

13 (1) Bridge replacement and improvement program—
14 not to exceed thirty-three million dollars;

15 (2) Appalachian highway system—not to exceed sixty-
16 two million dollars;

17 (3) Upgrading state local roads—not to exceed two
18 million dollars;

19 (4) Construction, reconstruction, improving and up-
20 grading of US Route 52 between Huntington and Blue-
21 field, West Virginia—not to exceed three million dollars.

22 No later than ten days after the close of each month,
23 the commissioner of the department of highways shall
24 submit to the president of the Senate and the speaker of
25 the House of Delegates of the Legislature of West Vir-
26 ginia a report of the specific projects and amount thereof
27 awarded by the department of highways and for which
28 such bond proceed moneys have been obligated or ex-
29 pended.

30 Such bonds may be issued by the governor in such
31 amounts, in coupon or registered form, in such denomina-

32 tions, at such time, bearing such date or dates, as the gov-
33 ernor may determine, based upon an examination of the
34 West Virginia department of highways' yearly program
35 which justified the issuance by the governor of said bonds,
36 and shall become due and payable serially, annually or
37 semiannually, in such amounts and mature in such years
38 as the governor may determine: *Provided*, That such
39 bonds shall be sold in increments not to exceed fifty mil-
40 lion dollars: *Provided, however*, That all bonds authorized
41 to be issued and sold under this act shall mature within
42 and not exceeding twenty-five years from their date:
43 *Provided further*, That the governor must offer said bonds
44 for competitive bids from recognized financial investment
45 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
2 to arrange for the transfer of registered bonds and for
3 each such transfer a fee of one dollar shall be charged
4 by and paid to the state of West Virginia, to the credit
5 of the state road fund. Bonds taken in exchange shall be
6 canceled by the auditor and treasurer and be carefully
7 preserved by the treasurer. The treasurer shall make
8 provisions for registering "payable to bearer" bonds, and
9 for each bond registered a fee of one dollar shall like-
10 wise be charged by and paid to the state of West Vir-
11 ginia, to the credit of the state road fund. All such bonds
12 shall be payable at the office of the treasurer of the state
13 of West Virginia, or, at the option of the holder, at a
14 bank in the city of New York to be designated by the
15 governor, or, at the option of the holder, at such other
16 bank or banks within the state as may be designated or
17 approved by the governor. The bonds shall bear interest,
18 payable semiannually, to bearer, at the office of the
19 treasurer of the state of West Virginia, at the capitol of
20 the state, or at the banks designated and approved by the
21 governor, upon presentation and surrender of interest
22 coupons then due, in the case of coupon bonds. For the
23 payment of interest on registered bonds, the treasurer
24 of the state of West Virginia shall requisition a warrant

25 from the auditor of the state to be drawn on the
 26 state treasurer, and shall mail such warrant to the
 27 registered owner at the address as shown by the record
 28 of registration. Both the principal and interest of the
 29 bonds shall be payable in lawful money of the United
 30 States of America and the bonds shall be exempt from
 31 taxation by the state of West Virginia, or by any county,
 32 district or municipality thereof, which facts shall appear
 33 on the face of the bonds as part of the contract with the
 34 holder thereof.

§3. Form of bond.

1 The bonds shall be executed on behalf of the state
 2 of West Virginia, by the manual or facsimile signature
 3 of the treasurer thereof, under the great seal of the state
 4 or a facsimile thereof, and countersigned by the manual
 5 or facsimile signature of the auditor of the state: *Provided*,
 6 That one of said signatures on said bonds shall be a
 7 manual signature and said bonds shall be in the following
 8 form or to the following effect, as nearly as may be,
 9 namely:

10

COUPON ROAD BOND

11

(Or registered road bond, as the case may be)

12

OF THE

13

STATE OF WEST VIRGINIA

14

\$ _____

No. _____

15 The state of West Virginia, under and by virtue of
 16 authority of an amendment to the constitution, which
 17 was proposed by Senate Joint Resolution No. 17, adopted
 18 the thirteenth day of April, one thousand nine hundred
 19 seventy-three, and was ratified by a vote of the people
 20 at the special election on the sixth day of November, one
 21 thousand nine hundred seventy-three, which is hereby
 22 made a part hereof as fully as if set forth at length
 23 herein, acknowledges itself to be indebted to and hereby
 24 promises to pay to the bearer hereof (in case of a coupon
 25 bond) or to _____ or assigns (the owner
 26 of record, in case of registered bonds) on the _____
 27 date of _____, 19____, in lawful money of the
 28 United States of America at the office of the treasurer of

29 the state of West Virginia at the capitol of said state, or,
30 at _____ bank in the city of New York, or, at _____
31 bank, within the state, at the option of the holder, the
32 sum of _____ dollars, with interest thereon at _____
33 percent a year from the date, payable semiannually in
34 like lawful money of the United States of America at the
35 treasurer's office or banks aforesaid, on the first day of
36 _____, and the first day of _____ of each year (and
37 in the case of coupon bonds) according to the tenor of
38 the annexed coupons bearing the facsimile signature of
39 the treasurer of the state of West Virginia upon sur-
40 render of such coupons. This bond (in case of a coupon
41 bond) may be exchanged for a registered bond of like
42 tenor upon application to the treasurer of the state of
43 West Virginia. (Redemption provisions, if any, to be
44 inserted here.)

45 To secure the payment of the principal and interest of
46 this bond, the state of West Virginia covenants and
47 agrees with the holder as follows: (1) That this bond
48 shall constitute a direct and general obligation of the
49 state of West Virginia; (2) that the full faith and credit
50 of the state is pledged to secure the payment of the prin-
51 cipal and interest of this bond; (3) that an annual
52 state tax shall be collected in an amount sufficient to
53 pay as it may accrue the interest on this bond and the
54 principal thereof; and (4) that such tax shall be levied
55 in any year only to the extent that the moneys in the
56 state road fund irrevocably set aside and appropriated
57 for and applied to the payment of the interest on and
58 principal of this bond becoming due and payable in such
59 year are insufficient therefor.

60 This bond is hereby made exempt from any taxation
61 by the state of West Virginia, or by any county, district
62 or municipal corporation thereof.

63 In testimony whereof, witness the manual or facsimile
64 signature of the treasurer of the state of West Virginia,
65 and the manual or facsimile countersignature of the
66 auditor of the state, hereto affixed according to law,
67 dated the _____ day of _____, one thousand

68 nine hundred _____, and the seal of the state
69 of West Virginia or a facsimile thereof.

70

71 Treasurer of the State of West Virginia.

72 (SEAL)

73 Countersigned:

74 _____

75 Auditor of the State of West Virginia.

§4. Form of coupon.

1 The form of coupon shall be substantially as follows, to
2 wit:

3 STATE OF WEST VIRGINIA

4 Bond No. _____ Coupon No. _____

5 On the first day of _____, 19____,
6 the state of West Virginia will pay to the bearer, in law-
7 ful money of the United States of America, at the office of
8 the treasurer of the state, or, at _____ bank
9 in the city of New York, or, at _____ bank
10 within the state, at the option of the holder, the sum of
11 _____ dollars, the same being semiannual
12 interest on Road Bond No. _____

13

14 _____
Treasurer of the State of West Virginia.

15 The signature of the treasurer to such coupon shall be
16 by his facsimile signature and the coupons shall be num-
17 bered in the order of their maturity, from number one
18 consecutively. The bonds and coupons may be signed, as
19 provided in this act, by the present treasurer and auditor,
20 or by any of their respective successors in office, and the
21 bonds signed by the persons now in the office may be sold
22 by the governor or his successor in office without being
23 signed by the successor in office of the present treasurer
24 or auditor.

§5. Listing by auditor.

1 All coupons and registered bonds issued under this act

2 shall be separately listed by the auditor of the state in
3 books provided for the purpose, in each case giving the
4 date, number, character and amount of obligations issued,
5 and in case of registered bonds, the name and post-office
6 address of the person, firm or corporation registered as
7 the owner thereof.

**§6. State road fund sources used to pay bonds and interest;
investment of remainder.**

1 Into the state road fund there shall be paid all money
2 from any and all appropriations made by the state from
3 the state road fund for the purpose of paying the interest
4 on such bonds or paying off and retiring the bonds, from
5 transfer and registration fees as herein provided, and
6 from any other source whatsoever which is made liable
7 by law for the payment of the principal of such bonds or
8 the interest thereon.

9 All such funds shall be kept by the treasurer in a sep-
10 arate account, under the designation aforesaid, and all
11 moneys belonging to the fund shall be deposited in the
12 state treasury to the credit thereof.

13 Such fund shall be applied by the treasurer of the state
14 first to the payment of the semiannual interest on such
15 bonds as it shall become due as herein provided. The
16 remainder of the fund shall be invested by the state
17 treasurer in obligations of the government of the United
18 States of America, bonds of the state of West Virginia,
19 or any political subdivision thereof: *Provided*, That bonds
20 or other obligations so purchased by the state treasurer
21 shall mature so as to provide sufficient money to pay
22 all bonds herein provided to be issued as they become
23 due; and the money so paid into the state road fund under
24 the provisions of this act shall be expended for the pur-
25 pose of paying the interest and principal of the bonds
26 hereby provided for as they severally become due and
27 payable.

§7. Covenants of state.

1 The state of West Virginia covenants and agrees with
2 the holders of the bonds issued pursuant hereto as fol-

3 lows: (1) That such bonds shall constitute a direct and
4 general obligation of the state of West Virginia; (2) that
5 the full faith and credit of the state is hereby pledged to
6 secure the payment of the principal and interest of such
7 bonds; (3) that an annual state tax shall be collected in
8 an amount sufficient to pay as it may accrue the interest
9 on such bonds and the principal thereof; and (4) that
10 such tax shall be levied in any year only to the extent
11 that the moneys in the state road fund irrevocably set
12 aside and appropriated for and applied to the payment of
13 the interest on and principal of said bonds becoming due
14 and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

1 The governor shall sell the bonds herein authorized at
2 such time or times as he may determine necessary to
3 provide funds for the building, construction, reconstruc-
4 tion, improving, upgrading and completion of state roads
5 and highways, and for bridge replacement and improve-
6 ment, as herein provided, upon the recommendation of
7 the West Virginia commissioner of highways, and after
8 reviewing the program of the West Virginia department
9 of highways and subject to the limitations contained in
10 this bill. All sales shall be at not less than par and accrued
11 interest. All interest coupons becoming payable prior to
12 the sale date shall be canceled by the treasurer and ren-
13 dered ineffective before the delivery of the bonds so sold.

**§9. Proceeds paid into separate account in state road fund;
expenditures; investment; annual accountability status
report.**

1 The proceeds of all sales of bonds herein authorized
2 shall be paid into a separate and distinct account in the
3 state road fund and shall be used and appropriated solely
4 for the building, construction, reconstruction, improving,
5 upgrading and completion of state roads and highways
6 and for bridge replacement and improvement as pro-
7 vided for by the state constitution and the laws enacted
8 thereunder.

9 Except for such sums necessary for current operating
10 balances, such account shall be invested by the state

11 treasurer in obligations of the government of the United
12 States, bonds of the state of West Virginia, or any political
13 subdivision thereof: *Provided*, That no such investment
14 may adversely affect the current operating balances of
15 such funds: *Provided, however*, That all interest ac-
16 cruing from such investment shall be paid into the state
17 road fund for debt service on the bonds issued.

18 On or before the thirty-first day of January of each
19 year, the commissioner of the department of highways
20 shall submit to the legislative auditor an accountability
21 status report of all moneys received or expended within
22 the state road fund, herein provided and any other in-
23 formation required to fully account in respect to the
24 handling of bonds issued and moneys expended under
25 the authority of the Better Highways Amendment of
26 1973. No moneys shall be expended by the commissioner
27 other than as authorized in said amendment.

§10. Plates, etc., property of state.

1 The plates, casts, dies or other forms from which the
2 bonds authorized by this bill are produced or made shall
3 be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

1 The state auditor shall be the custodian of all unsold
2 bonds issued pursuant to the provisions of this bill.

§12. Interim certificates.

1 The governor may authorize the issuance of interim
2 certificates to be issued to the purchasers of such bonds
3 to be held by them in lieu of permanent bonds. When
4 interim certificates are so issued, they shall become full
5 and legal obligations of the state of West Virginia under
6 all of the provisions of this bill just as fully and com-
7 pletely as the permanent bonds.

§13. State treasurer to be financial advisor.

1 The state treasurer shall serve as financial advisor to
2 the governor for the issuance and sale of such bonds.

§14. Attorney general or his duly appointed legal representative to serve as bond counsel.

1 The attorney general, or his duly appointed legal repre-
 2 sentative, shall serve as bond counsel and shall be
 3 responsible for the issuance of a final approving opinion
 4 regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses ap-
 2 proved by the attorney general, incurred in the execution
 3 of this act shall be paid out of the state road fund on
 4 warrants of the auditor of the state drawn on the state
 5 treasurer.

CHAPTER 94

(H. B. 830—By Mr. Colombo)

[Passed March 9, 1978; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article eight, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to disposition of certain state property; and allowing transfer of surplus state commodities between state departments and agencies, and allowing sale thereof to county commissions, county boards of education or municipalities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. STATE AGENCY FOR SURPLUS PROPERTY.

§5A-8-3a. Disposition by director of obsolete, etc., state commodities; semiannual report by director; application of proceeds from sale.

1 The director shall have the exclusive power and authority
 2 to make disposition of commodities or expendable com-

3 commodities now owned or in the future acquired by the state,
4 when, in the opinion of the director, any such commodities
5 are or shall become obsolete, unusable or are not being used,
6 or should be replaced.

7 It shall be the duty of the director to determine what
8 commodities or expendable commodities should be disposed of
9 and he shall make such disposition in the manner which in
10 his opinion will be most advantageous to the state, either by
11 transferring the particular commodities or expendable com-
12 modities between departments, by selling such commodities
13 to county commissions, county boards of education or
14 municipalities, by trading in such commodities as a part
15 payment on the purchase of new commodities, or by sale
16 thereof to the highest bidder by means of public auctions
17 or sealed bids, after having first advertised the time, terms
18 and place of such sale as a Class II legal advertisement
19 in compliance with the provisions of article three, chap-
20 ter fifty-nine of this code, and the publication area for
21 such publication shall be the county wherein the sale is
22 to be conducted. The sale may also be advertised in such
23 other advertising media as the director may deem advisable.
24 The director shall have the authority to sell to the highest
25 bidder or to any one or more of the highest bidders, if there
26 be more than one, or, if in his opinion the best interest of the
27 state will be served, to reject all bids.

28 Upon the transfer of commodities or expendable commodi-
29 ties between departments, or upon the sale thereof to a county
30 commission, county board of education or municipality, the
31 director shall set the price to be paid by the receiving depart-
32 ment, county commission, county board of education or
33 municipality, with due consideration given to current market
34 prices.

35 The director is also hereby authorized to sell expendable,
36 obsolete or unused motor vehicles owned by the State to
37 county commissions, county boards of education or municipi-
38 palities. The director, with due consideration given to current
39 market prices, shall set the price to be paid by the receiving
40 county commission, county board of education or municipality,
41 for motor vehicles sold pursuant to this provision: *Provided,*

42 That in no event shall the sale price of any motor vehicle sold
43 to a county commission, county board of education or municipi-
44 pality be less than the "average loan" value, as published in
45 the most recent available eastern edition of the National Auto-
46 motive Dealer's Association (N.A.D.A.) Official Used Car
47 Guide, if such a value be available. If no such value be
48 available, the director shall set the price to be paid by the
49 receiving county commission, county board of education or
50 municipality with due consideration given to current market
51 prices.

52 The director shall report to the legislative auditor, semi-
53 annually, all sales of commodities or expendable commodities
54 made during the preceding six months to county commissions,
55 county boards of education and municipalities. The report
56 shall include a description of the commodities sold, the price
57 paid by the commission, board or governing body which re-
58 ceived the commodities; and the report shall show to whom
59 each commodity was sold.

60 The proceeds of such sales or transfers shall be deposited in
61 the state treasury to the credit on a pro rata basis of the fund
62 or funds out of which the purchase of the particular com-
63 modities or expendable commodities was made: *Provided*,
64 That the director may charge and assess fees reasonably
65 related to the costs of care and handling with respect to the
66 transfer, warehousing, sale and distribution of state property
67 disposed of or sold pursuant to the provisions of this section.

CHAPTER 95

(S. B. 371—By Mr. Brotherton, Mr. President, and Mr. Hamilton)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to repeal section twenty-one, article eleven; sections eight, eleven and thirteen, article twelve; sections seven, ten, eleven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty, article twelve-a; sections

six, seven, seven-a, seven-b, eight, eight-a, eleven, twelve, fourteen, fifteen, sixteen, sixteen-a, twenty, twenty-two and twenty-four, article thirteen; sections seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-six, twenty-seven and twenty-eight, article fourteen; sections fourteen, fifteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five, article fourteen-a; sections eighteen, eighteen-b, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c, twenty-four-d, twenty-four-e, twenty-four-f, twenty-seven and twenty-eight, article fifteen; sections thirteen, fourteen, fifteen, sixteen, seventeen, twenty-four and twenty-five, article fifteen-a; sections eight, thirteen, fourteen, fifteen and sixteen, article seventeen; sections five-a, five-c, five-d, five-e, five-f, five-g, six and seven, article nineteen; sections eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twenty-one; sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six and thirty-seven, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend said chapter eleven by adding thereto a new article, designated article ten; to amend and reenact sections nine, ten, eleven, thirteen, fourteen-a, fourteen-b, fifteen, sixteen, eighteen, twenty, twenty-five and twenty-seven, article eleven of said chapter eleven; to further amend said article eleven by adding thereto a new section, designated section twenty-nine; to amend and reenact section one, article eleven-a of said chapter eleven; to amend and reenact section seven, article eleven-b of said chapter eleven; to amend and reenact sections five, seven, nine, ten, fourteen and fifteen, article twelve of said chapter eleven; to further amend said article twelve by adding thereto a new section, designated section eighteen; to amend article twelve-a of said chapter eleven by adding thereto two new sections, designated sections six-a and twenty-three; to amend and reenact sections nine, thirteen and eighteen, article thirteen of said chapter

eleven; to further amend said article thirteen by adding thereto a new section, designated section twenty-seven; to amend and reenact sections seven, ten, eleven, eleven-a, twelve, nineteen and twenty-five, article fourteen of said chapter eleven; to further amend said article fourteen by adding thereto a new section, designated section thirty; to amend and reenact sections five, eleven and sixteen, article fourteen-a of said chapter eleven; to further amend said article fourteen-a by adding thereto a new section, designated section twenty-seven; to amend and reenact sections four-b, sixteen, seventeen and twenty-three, article fifteen of said chapter eleven; to further amend said article fifteen by adding thereto a new section, designated section thirty-two; to amend and reenact sections twelve, twenty-one and twenty-two, article fifteen-a of said chapter eleven; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-eight; to amend and reenact sections ten, twelve, seventeen and nineteen, article seventeen of said chapter eleven; to further amend said article seventeen by adding thereto a new section, designated section twenty-two; to amend and reenact sections five-b, seven-a and ten, article nineteen of said chapter eleven; to further amend said article nineteen by adding thereto a new section, designated section twelve; to amend and reenact section seventy-five, article twenty-one of said chapter eleven; to further amend said article twenty-one by adding thereto a new section, designated section ninety-five; to amend and reenact section thirty-eight, article twenty-four of said chapter eleven; and to further amend said article twenty-four by adding thereto a new section, designated section forty-one; and to amend and reenact sections eight and nine, article twenty-five of said chapter eleven; and to amend and reenact section nineteen-a, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the administration, assessment and collection of all taxes administered by the state tax commissioner, except ad valorem taxes on real and personal property and the corporate license tax, and enforcement procedures in connection therewith;

providing for adoption of the "West Virginia tax procedure and administration act," setting forth certain legislative findings; relating to application of such act; defining terms used in such act; relating as to such act to: rules and regulations and forms; investigations; subpoenas and subpoenas duces tecum and penalty for disobedience or neglect thereof; returns by tax commissioner; secrecy of returns and criminal penalty for violation; reciprocal exchange of information; inspection of business and occupation tax returns; service of notice; release of administrative decisions; timely filing and paying; time for performance of acts where last day falls on Saturday, Sunday or legal holiday; enforcement of article by tax commissioner with assistance of prosecuting attorney; mathematical errors resulting in underpayment; collection of balance due on return without remittance; assessment, jeopardy assessment, amended assessment, abatement of assessment, procedures and finality of assessment where no protest; notice of assessment and reassessment procedures including petitions for reassessment; hearings, hearing procedures and burdens of proof; appeals and appeal procedures including right of appeal, venue, petition and notice of appeal, appeal bond and burden of proof; collection of taxes and collection procedures generally; collection procedures and liabilities involving persons other than taxpayer; prerequisite to final settlement of contracts with nonresident contractors, requirement to withhold and personal liability of user; prerequisite for issuance of certificate of dissolution or withdrawal of corporations; prerequisite to final settlement of contracts with this state or political subdivision, and civil penalty for violation; effect of tax commissioner certificates; payment when person sells out or quits business and lien for unpaid taxes; successor in business required to withhold for unpaid taxes and personal liability for failure; injunctions; costs for collection proceedings; creation, duration, recordation and release of liens; distress warrants including execution by tax commissioner; refunds and credits of overpayments and refunds and credits of gasoline and special fuels excise tax and motor carrier road tax; procedures for claiming re-

fund or credit including the filing and determination of claim, hearing, appeals to circuit courts, decision of the court, authority to make refund or establish credit, form of claim, when return constitutes claim, applicability of refund procedure, refund procedure provided is exclusive, and assessment to recover erroneous refunds or credits; period of limitation on filing claim for refund or credit, extension of time for filing claim by agreement, special rule where agreement to extend time for making assessment, overpayment of federal tax, special rule for deficiency in business and occupation or carrier income taxes, exception for gasoline and special fuel excise tax and motor carrier road tax, and transition rules; periods of limitation on assessments, agreement for extension of period, special rule where deficiency in federal tax and transition rules; periods of limitation on collection, exception for false or fraudulent return or where no return filed, exception for inheritance tax lien, and extension of time by agreement; interest due on underpayments; underpayment of estimated business and occupation tax; interest due on erroneous refunds and credits; interest paid on overpayments except no interest paid where tax refunded or credited within ninety days, six month exception for income tax refunds, no interest paid on overpayment of tax imposed by articles twelve, fourteen and fourteen-a of chapter eleven; interest treated as tax; no interest charged on interest; interest charged on penalties and additions to tax and special rule where payment made within fifteen days after notice and demand; additions to tax for failure to file return or failure to remit tax shown to be due on a return and special rule, additions to tax for negligence or intentional disregard of rules and regulations, additions to tax for filing of false or fraudulent return with intent to evade or failure to file return with intent to evade and procedure for collecting additions to tax; penalty for failure to collect, account for and pay over tax, or attempt to defeat or evade tax; penalty for furnishing false or fraudulent withholding statement or failure to furnish statement; penalty for fraudulent claim for refund or credit; procedure for collection of penalty; providing for the effective date of

said act and other pertinent dates, establishing transition rules in application of said act, preserving former provisions of law as to existing liens and assessments and tax liabilities for periods prior to the effective date of the act and authorizing a taxpayer election in connection therewith under certain circumstances; providing a severability rule; tax, lien for tax and limitations upon collection, extension of time pending settlement of estate, payments and collection, report of transfers by county commission; transfer of bonds or stocks standing in the name of decedent and reports by corporation with liability for noncompliance and penalty, annuity and investment contracts, payments to beneficiaries under such contracts with notice of payment to tax commissioner and penalties for noncompliance, assessment by tax commissioner, assessment of transfers not reported to commissioner, amended assessment and recordation, settlement by state tax commissioner of dispute as to relationship between decedent and transferee, liability of fiduciaries and sureties and revocation of their authority, inspection of books and records with criminal penalty for failure to exhibit, and making the provisions of said "West Virginia tax procedure and administration act" applicable, all of the inheritance and transfer tax; relating to procedure and authority for compromise of inheritance and death taxes of the interstate compromise of inheritance and death taxes; relating to imposition of additions to tax, penalties and interest for nonpayment of inheritance tax, of the interstate arbitration of inheritance and death taxes; relating to time for which registration certificates granted and power of the tax commissioner to cancel certificates after hearing, display of registration certificate, injunction against collection of tax prohibited; providing for information of whether person is registered to be public information, penalty for default, collection of back taxes, notice to commissioner of discontinuance of business and liability of transferor and transferee, collection by civil action, hearing and appeal procedure before cancellation of registration certificate, enforcement, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of

the business franchise registration certificate tax; relating to report of change in federal taxable income, and making the provision of the "West Virginia tax procedure and administration act" applicable, all of the annual tax on incomes of certain carriers; relating to tax year, receivership or insolvency proceedings, agents for collection of delinquent taxes, and making the "West Virginia tax procedure and administration act" applicable, all of the business and occupation tax; relating to due date of reports, required reports, keeping of records, examination of records, subpoena powers, examination of witnesses, refunds of taxes illegally collected, refunds for gallonage exported or lost, refunds of taxes because of change of tax rate, claims for refund and period of limitation on refund claims, refund of tax because of certain nonhighway uses including procedures and content of claim for refund and period of limitations on claims for refund, refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services, including procedures and content of claim for refund and period of limitation on claims for refund, right to refund not assignable, partial refund of tax on tax-paid gallonage consumed in buses including procedures and content of claim for refund, penalty for failure to file required return where no tax due, receivership or insolvency proceedings, and making the "West Virginia tax procedure and administration act" applicable, all of the gasoline and special fuels excise tax; relating to reports of carriers, joint reports, records, inspection of records, subpoenas and witnesses, refunds and claims for refund and procedures therefor including surety bonds, penalty for failure to file required return when no tax is due, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the motor carrier road tax; relating to liability of purchaser and assessment and collection from purchaser, tax returns, payment and date due of returns, personal liability of officers of association or corporation for any default of association or corporation, keeping and preservation of records, and making the provisions of the "West Virginia tax procedure and administration act"

applicable, all of the consumers sales and service tax; relating to bond to secure payment, examination of books and records, canceling or revoking of business franchise registration certificate for noncompliance with use tax law after notice and hearing, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the use tax; relating to refunds, required reports, due dates of reports, keeping of records, inspection of records and stocks, examination of witnesses under oath and court summons of persons and books and records for failure to appear or allow investigation, enforcement powers including all lawful powers delegated to members of department of public safety, assistance in enforcement by state department of public safety and performance bond, penalty for failure to file required return when no tax is due, criminal penalties for certain offenses and violations and presumptions, when cigarettes deemed contraband and the seizure and sale thereof, concurrent jurisdiction of courts and magistrate courts for trial of misdemeanors, and making all the provisions of the "West Virginia tax procedure and administration act" applicable, all of the cigarette tax act; relating to additional penalty for late filing of return or late payment, seizure and forfeiture and sale of soft drink syrups by commissioner for collection of tax including procedures for sale, penalties and crimes, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the soft drink tax; relating to employer's liability for withheld taxes and withheld tax being deemed money held in trust, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the personal income tax; relating to criminal penalty for failure to file returns, submit information or pay tax, criminal penalty for failure to collect and pay over tax, or attempt to defeat or evade tax, criminal penalty for making a false return or certification, definition of term person, evidence of failure to pay tax or make return or supply required information, venue for criminal proceedings, and making the provisions of the "West Virginia tax procedure and administration act" applicable, all of the corporation net income

tax; relating to denial of claim, violation of article, assessment, interest, penalties, criminal penalty for fraudulent claim, hearing on denial of claim, all of the tax relief for elderly homeowners and renters; providing for additions to tax, penalties and interest in connection with all such taxes; relating to limitation on collection of taxes due the state or any political subdivision thereof; making the provisions of said "West Virginia tax procedure and administration act" applicable to all such taxes; establishing criminal offenses; and providing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article eleven; sections eight, eleven and thirteen, article twelve; sections seven, ten, eleven, twelve, thirteen, fourteen, sixteen, seventeen, eighteen, nineteen and twenty, article twelve-a; sections six, seven, seven-a, seven-b, eight, eight-a, eleven, twelve, fourteen, fifteen, sixteen, sixteen-a, twenty, twenty-two and twenty-four, article thirteen; sections seventeen, eighteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-six, twenty-seven and twenty-eight, article fourteen; sections fourteen, fifteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five, article fourteen-a; sections eighteen, eighteen-b, twenty-four, twenty-four-a, twenty-four-b, twenty-four-c, twenty-four-d, twenty-four-e, twenty-four-f, twenty-seven and twenty-eight, article fifteen; sections thirteen, fourteen, fifteen, sixteen, seventeen, twenty-four and twenty-five, article fifteen-a; sections eight, thirteen, fourteen, fifteen and sixteen, article seventeen; sections five-a, five-c, five-d, five-e, five-f, five-g, six and seven, article nineteen; sections eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twenty-one; sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six and thirty-seven, article twenty-four, all of chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter eleven be amended by adding thereto a new article, designated article ten; that sections nine, ten, eleven, thirteen, fourteen-a,

fourteen-b, fifteen, sixteen, eighteen, twenty, twenty-five and twenty-seven, article eleven of said chapter eleven be amended and reenacted; that said article eleven be further amended by adding thereto a new section, designated section twenty-nine; that section one, article eleven-a of said chapter eleven be amended and reenacted; that section seven, article eleven-b of said chapter eleven be amended and reenacted; that sections five, seven, nine, ten, fourteen and fifteen, article twelve of said chapter eleven be amended and reenacted; that said article twelve be further amended by adding thereto a new section, designated section eighteen; that article twelve-a of said chapter eleven be amended by adding thereto two new sections, designated sections six-a and twenty-three; that sections nine, thirteen and eighteen, article thirteen of said chapter eleven be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section twenty-seven; that sections seven, ten, eleven, eleven-a, twelve, nineteen and twenty-five, article fourteen of said chapter eleven be amended and reenacted; that said article fourteen be further amended by adding thereto a new section, designated section thirty; that sections five, eleven and sixteen, article fourteen-a of said chapter eleven be amended and reenacted; that said article fourteen-a be further amended by adding thereto a new section, designated section twenty-seven; that sections four-b, sixteen, seventeen and twenty-three, article fifteen of said chapter eleven be amended and reenacted; that said article fifteen be further amended by adding thereto a new section, designated section thirty-two; that sections twelve, twenty-one and twenty-two, article fifteen-a of said chapter eleven be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-eight; that sections ten, twelve, seventeen and nineteen, article seventeen of said chapter eleven be amended and reenacted; that said article seventeen be further amended by adding thereto a new section, designated section twenty-two; that sections five-b, seven-a and ten, article nineteen of said chapter eleven be amended and reenacted; that said article nineteen be further amended by adding thereto a new section, designated section twelve; that section seventy-five, article twenty-one of said chapter eleven be amended and reenacted; that said article twenty-one be further

amended by adding thereto a new section, designated section ninety-five; that section thirty-eight, article twenty-four of said chapter eleven be amended and reenacted; that said article twenty-four be further amended by adding thereto a new section, designated section forty-one; that sections eight and nine, article twenty-five be amended and reenacted, all of chapter eleven of said code, and that section nineteen-a, article two of chapter fifty-five of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

55. Actions, Suits and Arbitration; Judicial Sales.

CHAPTER 11. TAXATION.

Article

10. Procedure and Administration.

11. Inheritance and Transfer Taxes.

11A. Interstate Compromise of Inheritance and Death Taxes.

11B. Interstate Arbitration of Inheritance and Death Taxes.

12. Business Franchise Registration Certificate Tax.

12A. Annual Tax on Incomes of Certain Carriers.

13. Business and Occupation Tax.

14. Gasoline and Special Fuel Excise Tax.

14A. Motor Carrier Road Tax.

15. Consumers Sales Tax.

15A. Use Tax.

17. Cigarette Tax Act.

19. Soft Drinks Tax.

21. Personal Income Tax.

24. Corporation Net Income Tax.

25. Tax Relief for Elderly Homeowners and Renters.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-1. Legislative findings.

§11-10-2. Short title; arrangement and classification.

§11-10-3. Application of this article.

§11-10-4. Definitions.

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§11-10-6. Mathematical errors; collection of balance due on return without a remittance.

- §11-10-7. Assessment.
- §11-10-8. Notice of assessment; petition for reassessment.
- §11-10-9. Hearing procedure.
- §11-10-10. Appeals.
- §11-10-11. Collection.
- §11-10-12. Liens.
- §11-10-13. Distrain.
- §11-10-14. Overpayments; credits; refunds; and limitations.
- §11-10-15. Limitations on assessment.
- §11-10-16. Limitations on collection.
- §11-10-17. Interest.
- §11-10-18. Additions to tax.
- §11-10-19. Penalties.
- §11-10-20. Effective date; transition rules.
- §11-10-21. Severability.

§11-10-1. Legislative findings.

1 The Legislature hereby finds and declares that the
2 adoption by this state of certain uniform procedures for
3 the assessment and collection of the taxes administered
4 by the tax commissioner to which this article applies
5 will (1) simplify the administration and collection of
6 taxes, and (2) promote efficiency and uniformity of ap-
7 plication in the administration of the tax laws. The
8 Legislature does therefore declare that this article ten
9 be construed so as to accomplish the foregoing purposes.

§11-10-2. Short title; arrangement and classification.

1 This article may be cited as the "West Virginia Tax
2 Procedure and Administration Act." No inference, im-
3 plication or presumption of legislative construction shall
4 be drawn or made by reason of the location or grouping
5 of any particular section or provision or portion of this
6 article, and no legal effect shall be given to any descrip-
7 tive matter or headings relating to any part, section,
8 subsection or paragraph of this article.

§11-10-3. Application of this article.

1 The provisions of this article shall apply to the inheri-
2 tance and transfer taxes and interstate compromise and
3 arbitration of inheritance and death taxes, the business
4 franchise registration certificate tax, the annual tax on
5 incomes of certain carriers, the business and occupation

6 tax, the consumers sales and service tax, the use tax,
7 the cigarette tax, the soft drinks tax, the personal in-
8 come tax, the corporation net income tax, the gasoline
9 and special fuel excise tax, the motor carrier road tax,
10 and the tax relief for elderly homeowners and renters
11 administered by the state tax commissioner. This article
12 shall not apply to ad valorem taxes on real and personal
13 property, the corporate license tax or any other tax
14 not listed hereinabove.

§11-10-4. Definitions.

1 For the purpose of this article, the term:

2 (a) "Person" shall include, but is not limited to, any
3 individual, firm, partnership, limited partnership, co-
4 partnership, joint adventure, association, corporation,
5 municipal corporation, organization, receiver, estate,
6 trust, guardian, executor, administrator, and also any
7 officer, employee or member of any of the foregoing
8 who, as such officer, employee or member, is under a
9 duty to perform or is responsible for the performance
10 of an act prescribed by the provisions of this article
11 and the provisions of any of the other articles of this
12 chapter which impose taxes administered by the tax
13 commissioner, unless the intention to give a more limited
14 or broader meaning is disclosed by the context of this
15 article or any of the other articles of this chapter which
16 impose taxes administered by the tax commissioner.

17 (b) "State" means any state of the United States or
18 the District of Columbia.

19 (c) "Tax" or "taxes" includes within the meaning
20 thereof taxes specified in section three of this article,
21 additions to tax, penalties and interest, unless the in-
22 tention to give the same a more limited meaning is dis-
23 closed by the context.

24 (d) "Tax commissioner" or "commissioner" means
25 the tax commissioner of the state of West Virginia or
26 his delegate.

27 (e) "Taxpayer" means any person required to file a
28 return for any tax administered under this article, or

29 any person liable for the payment of any tax admin-
30 istered under this article.

31 (f) "Tax administered under this article" means any
32 tax to which this article applies as set forth in section
33 three of this article.

34 (g) "This code" means the code of West Virginia,
35 one thousand nine hundred thirty-one, as amended.

36 (h) "This state" means the state of West Virginia.

**§11-10-5. General provisions; regulations and forms; investi-
gations; subpoena and subpoena duces tecum; re-
turns by tax commissioner; secrecy of returns;
reciprocal exchange; inspection of business and
occupation tax returns; release of administrative
decisions; service of notice; timely filing and pay-
ing; time of performance of acts where last day
falls on Saturday, Sunday, or legal holiday; en-
forcement of article.**

1 (a) *Regulations and forms.*—The tax commissioner
2 shall administer and enforce each tax to which this
3 article applies and, in connection therewith, shall pre-
4 scribe all necessary forms. The commissioner may make
5 all needful rules and regulations for the taxes to which
6 this article applies as provided in the State Adminis-
7 trative Procedures Act in chapter twenty-nine-a of this
8 code: *Provided*, That all rules and regulations of the
9 tax commissioner presently in effect on the effective
10 date of this article shall remain in full force and effect
11 until amended or repealed by the tax commissioner in
12 the manner prescribed by law.

13 (b) *Investigations.*—For the purpose of ascertaining
14 the correctness of any tax return or assessment and
15 for the purpose of making an estimate of any taxpayer's
16 liability for any tax administered under this article,
17 and for the further purpose of conducting the hearings
18 provided for in section nine of this article, the tax com-
19 missioner shall have the power to examine or cause to
20 be examined, by any agent or representative designated
21 by the tax commissioner, any books, papers, records,

22 memoranda, inventory or equipment bearing upon the
23 matters required to be included in the tax return, may
24 make test checks of tax yield, and may require the
25 attendance of the person rendering the tax return or
26 the attendance of any other person having knowledge
27 of the matters contained therein and may take testi-
28 mony and may require material proof with power to
29 administer oath to such person or persons.

30 (c) *Subpoena and subpoena duces tecum.*—For the
31 efficient administration of the powers vested in the tax
32 commissioner by subsection (b), the tax commissioner
33 shall have the power to issue subpoenas and subpoenas
34 duces tecum, in the name of his agency, and compel
35 the attendance of witnesses and the production of books,
36 papers, records, documents and testimony at the time
37 and place specified. Every such subpoena and subpoena
38 duces tecum shall be served at least five days before the
39 return date thereof by personal service made by any
40 person over eighteen years of age. Service of subpoenas
41 and subpoenas duces tecum shall be the responsibility
42 of the tax commissioner or his delegate. Any person,
43 except a person in the employ of the state tax depart-
44 ment, who serves any such subpoena or subpoena duces
45 tecum shall be entitled to the same fee as sheriffs who
46 serve witness subpoenas for the circuit courts of this
47 state. Upon motion made promptly, and in any event
48 before the time specified in a subpoena or subpoena
49 duces tecum for compliance therewith, the circuit court
50 of the county in which the person upon whom any such
51 subpoena or subpoena duces tecum was served resides,
52 has his or its principal place of business or is employed,
53 or the circuit court of the county in which any such
54 subpoena or subpoena duces tecum was served, or the
55 judge of any such circuit court in vacation, may grant
56 any relief with respect to any such subpoena or sub-
57 poena duces tecum which any such circuit court, under
58 the “West Virginia Rules of Civil Procedure for Trial
59 Courts of Record,” could grant, and for any of the same
60 reasons, with respect to any such subpoena or sub-
61 poena duces tecum issued from any such circuit court.

62 In case of disobedience or neglect of any subpoena or
63 subpoena duces tecum served on any person, or the
64 refusal of any witness to testify to any matter regarding
65 which he may be lawfully interrogated, the circuit court
66 of Kanawha County or of the county in which such
67 person resides, has his or its principal place of business
68 or is employed, or the judge thereof in vacation, upon
69 application by the tax commissioner, shall compel obedi-
70 ence by attachment proceedings for contempt as in
71 the case of disobedience of the requirements of a sub-
72 poena or subpoena duces tecum issued from such circuit
73 court or a refusal to testify therein. Witnesses sub-
74 poenaed under this subsection shall testify under oath
75 or affirmation.

76 (d) *Returns by tax commissioner.*—If any taxpayer
77 fails to file a return at the time required by law or by
78 regulation made under authority of law, the tax com-
79 missioner may proceed to make a return from any in-
80 formation available.

81 (e) *Secrecy of returns.*—Except when required in an
82 official investigation into the amount of tax due under
83 any article administered under this article or in any
84 proceeding before a court of competent jurisdiction to
85 collect or ascertain the amount of such tax and except
86 as provided in subsections (f), (g) and (h), it shall be
87 unlawful for any officer or employee of this state to
88 divulge or make known in any manner the tax return,
89 or any part thereof of any individual, firm or corpora-
90 tion, or disclose information concerning the personal
91 affairs of any individual or the business of any single
92 firm or corporation, or disclose the amount of income,
93 or any particulars set forth or disclosed in any report,
94 declaration or return required to be filed with the tax
95 commissioner by any article of this chapter imposing
96 any tax administered under this article or by any
97 rule or regulation of the tax commissioner issued
98 thereunder.

99 Any officer or employee of this state who violates
100 this subsection shall be guilty of a misdemeanor, and,
101 upon conviction thereof, shall be fined not more than

102 one thousand dollars or imprisoned for not more than
103 one year, or both, together with costs of prosecu-
104 tion.

105 Any person protected by the provisions of this article
106 may, in writing, waive the secrecy provisions of this
107 subsection for such purpose and such period as he shall
108 therein state, and the commissioner, if he so determines,
109 may thereupon release to designated recipients such
110 taxpayer's return or other particulars filed under the
111 provisions of the tax articles administered under the
112 provisions of this article.

113 This subsection shall not be construed to prohibit the
114 publication or release of statistics so classified as to pre-
115 vent the identification of particular reports and the
116 items thereof.

117 (f) *Reciprocal exchange.*—The tax commissioner may
118 permit the proper officer of the United States, or the
119 District of Columbia, or any other state, or any political
120 subdivision of this state, or his authorized representa-
121 tive, to inspect reports, declarations or returns filed
122 with the tax commissioner or may furnish to such officer
123 or representative a copy of any such document provided
124 such other jurisdiction grants substantially similar priv-
125 ileges to the tax commissioner or to the attorney
126 general of this state.

127 (g) *Inspection of business and occupation tax returns*
128 *by municipalities.*—The tax commissioner shall, upon the
129 written request of the mayor of any West Virginia
130 municipality having a business and occupation tax or
131 privilege tax, allow the duly authorized agent of such
132 municipality to inspect and make copies of the state
133 business and occupation tax return filed by taxpayers
134 of such municipality, for the purpose of securing in-
135 formation for municipal tax purposes provided such
136 municipality allows the tax commissioner the right to
137 inspect or make copies of the municipal business and
138 occupation tax returns of such municipality.

139 (h) *Release of administrative decisions.*—The tax
140 commissioner may, in his discretion, release his admin-

141 istrative decisions, or a summary thereof, to the public:
142 *Provided*, That, unless waived in writing by the tax-
143 payer, any identifying characteristics or facts about the
144 taxpayer shall be omitted or modified to such an extent
145 so as to not disclose the name or identity of the
146 taxpayer.

147 (i) *Service of notice*.—Notices of assessments and
148 administrative decisions shall be served upon the tax-
149 payer either by personal service or by certified
150 mail.

151 (j) *Timely filing and paying*.

152 (1) *Delivery in person*.—If any return, claim, state-
153 ment or other document required to be filed, or any
154 payment required to be made within a prescribed period
155 or on or before a prescribed date, is delivered in
156 person on or before such date to the tax commissioner,
157 or the appropriate division or officer of the tax depart-
158 ment, at Charleston, West Virginia, during normal busi-
159 ness hours of the tax department, it shall be timely
160 filed.

161 (2) *Timely mailing*.—If any return, claim, statement
162 or other document, required to be filed, or any payment
163 required to be made within a prescribed period or on
164 or before a prescribed date under authority of the
165 provisions of any article of this chapter imposing any
166 tax administered under this article, is, after such period
167 or such date, delivered by United States mail to the
168 tax commissioner or the state tax department, the
169 date of the United States postmark stamped on the
170 cover in which such return, claim, statement, or other
171 document or payment is mailed shall be deemed to be
172 the date of delivery or the date of payment, as the case
173 may be, provided the following mailing requirements
174 are met:

175 (A) The postmark date falls within the prescribed
176 period or on or before the prescribed date for filing
177 (including any extension granted for such filing) of
178 the return, claim, statement or other document, or for

179 making the payment (including any extension granted
180 for such payment), and

181 (B) The return, claim, statement, other document
182 or payment was, within the time prescribed in sub-
183 paragraph (A), deposited in the mail in the United States
184 in an envelope or other appropriate wrapper, postage
185 prepaid, properly addressed to the tax commissioner
186 or the state tax department.

187 (3) Postmarks.—This subsection shall apply in the
188 case of postmarks not made by the United States post
189 office only if and to the extent provided by rules or
190 regulations prescribed by the tax commissioner.

191 (4) Registered and certified mailing.—For purposes
192 of this subsection, if any return, claim, statement, or
193 other document or payment is sent by United States
194 registered or certified mail, the date of registration
195 or certification shall be deemed the postmark date.

196 (5) Last date for filing or payment.—The last date
197 for timely filing or timely making payment shall in-
198 clude any extension of time authorized by law or regu-
199 lation and any extension of time granted in writing by
200 the tax commissioner.

201 (k) *Time for performance of acts where last day*
202 *falls on Saturday, Sunday or legal holiday.*—When the
203 last day prescribed under authority of any article of
204 this chapter imposing any tax administered under this
205 article for performing any act falls on Saturday, Sun-
206 day or a legal holiday, the performance of such act
207 shall be considered timely if it is performed on the
208 next succeeding day which is not a Saturday, Sunday
209 or a legal holiday. For purposes of this subsection, the
210 last day for the performance of any act shall be deter-
211 mined by including any authorized extension of time;
212 and the term “legal holiday” means a legal holiday
213 in this state.

214 (l) *Enforcement.*—The enforcement of any of the
215 provisions of this article or the provisions of any article
216 of this chapter administered under this article, in any

217 of the courts of this state shall be under the exclusive
218 jurisdiction of the tax commissioner, who shall require
219 the assistance of and act through the prosecuting attorney
220 of any county where suit is brought. Such prosecuting
221 attorney shall receive no fees or compensation in addi-
222 tion to the salary paid by the county to such offices,
223 for services rendered in enforcing this article or any of
224 the other articles of this chapter administered under
225 this article.

§11-10-6. Mathematical errors; collection of balance due on return without a remittance.

1 (a) *Mathematical error.*—When it appears to the tax
2 commissioner that the taxpayer has made a mathematical
3 error (including an overstatement of the credit for the
4 amount paid as estimated tax), the tax commissioner
5 shall correct such error and notify the taxpayer, in
6 writing, of the deficiency in tax. The taxpayer shall
7 have fifteen days after receipt of such notice within
8 which to pay such deficiency. If the taxpayer fails to
9 pay such deficiency within fifteen days, the tax commis-
10 sioner shall make an assessment of such deficiency in
11 accordance with section seven and shall give the tax-
12 payer written notice thereof.

13 (b) *Collection of balance due.*—If a taxpayer files a
14 mathematically correct return which reflects a balance
15 due of any tax administered under this article, and if
16 full payment thereof has not been made, the tax com-
17 missioner shall notify the taxpayer, in writing, of the
18 amount of tax, additions to tax, penalties or interest due.
19 The taxpayer shall have fifteen days after receipt of
20 such notice within which to make payment. If the tax-
21 payer fails to make payment within such fifteen-day
22 period, the tax commissioner shall proceed under section
23 eleven of this article to collect the amount due.

§11-10-7. Assessment.

1 (a) *General.*—If the tax commissioner believes that
2 any tax administered under this article has been in-
3 sufficiently returned by a taxpayer, either because the

4 taxpayer has failed to properly remit the tax, or has
5 failed to make a return, or has made a return which is
6 incomplete, deficient or otherwise erroneous, he may
7 proceed to investigate and determine or estimate the tax
8 liability and make an assessment therefor.

9 (b) *Jeopardy assessments.*—If the tax commissioner
10 believes that the collection of any tax administered under
11 this article will be jeopardized by delay, he shall there-
12 upon make an assessment of tax, noting that fact upon
13 the assessment. The amount assessed shall immediately
14 be due and payable. Unless the taxpayer against whom
15 a jeopardy assessment is made petitions for reassessment
16 within twenty days after service of notice of the jeopardy
17 assessment, such assessment shall become final: *Pro-*
18 *vided,* That upon written request of the taxpayer made
19 within such twenty-day period, showing reasonable
20 cause therefor, the tax commissioner may grant an
21 extension of time not to exceed thirty additional days
22 within which such petition may be filed. If a taxpayer
23 against whom a jeopardy assessment has been made
24 petitions for reassessment or requests an extension of
25 time to file a petition for reassessment, the petition or
26 request shall be accompanied by such security as the
27 tax commissioner may deem necessary to insure com-
28 pliance with the applicable provisions of this chapter. If
29 such petition for reassessment is filed, accompanied by the
30 necessary security, the provisions for hearing, determina-
31 tion and appeal set forth in sections nine and ten shall
32 then be applicable.

33 (c) *Abatement or amendment of assessment.*—The tax
34 commissioner may abate or amend, in whole or in part,
35 any assessment whenever he ascertains that such assess-
36 ment is improper or incomplete in any material re-
37 spect.

§11-10-8. Notice of assessment; petition for reassessment.

1 The tax commissioner shall give the taxpayer written
2 notice of any assessment or amended assessment made
3 pursuant to this article. Unless the taxpayer to whom a

4 notice of assessment, or amended assessment, is given
5 shall, within sixty days after service thereof (except in
6 the case of jeopardy assessments, as to which the time
7 for filing a petition is specified in section seven), either
8 personally or by certified mail, file with the tax com-
9 missioner a petition in writing, verified under oath by
10 the taxpayer or his duly authorized agent, having knowl-
11 edge of the facts, setting forth with particularity the
12 items of the assessment objected to, together with the
13 reasons for the objections, the assessment or amended
14 assessment shall become final and not subject to either
15 administrative or judicial review under the provisions
16 of sections nine and ten of this article. The amount of
17 an assessment or amended assessment shall be due and
18 payable on the day following the date upon which the
19 assessment or amended assessment becomes final.

§11-10-9. Hearing procedure.

1 When a petition for reassessment provided for in sec-
2 tion eight of this article, or a petition for refund or credit
3 provided for in section fourteen of this article, is filed
4 within the time prescribed by said sections for such
5 filing, or a hearing is requested pursuant to the provisions
6 of any other article of this chapter which is administered
7 under this article, the tax commissioner shall assign a
8 time and place for a hearing upon the same and shall
9 notify the petitioner of such hearing by written notice
10 at least twenty days in advance thereof. Such hearing
11 shall be held within ninety days from the date of filing
12 the petition or other written request for hearing unless
13 continued by agreement of the parties or by the tax
14 commissioner for good cause.

15 The hearing shall be informal and shall be conducted
16 in an impartial manner by the tax commissioner or a
17 hearing examiner designated by him. If the hearing is
18 on a petition for reassessment the burden of proof shall
19 be upon the taxpayer to show the assessment is incorrect
20 and contrary to law, either in whole or in part. If the
21 hearing is on a petition for refund or credit, the petitioner
22 shall also have the burden of proof.

23 After any hearing as above provided for; the tax
24 commissioner shall, within a reasonable time, give notice
25 in writing of his decision. Unless an appeal from the
26 decision of the tax commissioner rendered in any such
27 hearing is taken, pursuant to the provisions of section
28 ten of this article, within sixty days after service of such
29 notice, the tax commissioner's decision shall become final
30 and conclusive and not subject to either administrative
31 or judicial review. The amount, if any, due the state
32 under such decision shall be due and payable on the
33 day following the date upon which such decision becomes
34 final. The amount, if any, due the taxpayer under such
35 decision shall be promptly refunded, or the same may
36 be credited pursuant to section fourteen of this article.

§11-10-10. Appeals.

1 (a) *Right of appeal.*—A taxpayer may appeal the ad-
2 ministrative decision of the tax commissioner issued
3 under section nine or fourteen of this article, by taking
4 an appeal to the circuit courts of this state within sixty
5 days after being served with notice of the administrative
6 decision.

7 (b) *Venue.*—The appeal may be taken in the circuit
8 court of any county:

9 (1) wherein the activity taxed was engaged in; or

10 (2) wherein the taxpayer resides; or

11 (3) wherein the will of the decedent was probated
12 or letters of administration granted; or

13 (4) to the circuit court of Kanawha County.

14 (c) *Petition for appeal.*—The appeal proceeding shall
15 be instituted by filing a petition with the circuit court,
16 or the judge thereof in vacation, within the sixty-day
17 period prescribed in subsection (a). The clerk of the
18 circuit court shall, within ten days after date the petition
19 is filed, serve the tax commissioner with a copy of the
20 same by registered or certified mail. This petition shall
21 be in writing, verified under oath by the taxpayer, or his

22 duly authorized agent, having knowledge of the facts,
23 set forth with particularity the items of the administra-
24 tive decision or the assessment objected to, together with
25 the reasons for such objections.

26 (d) *Appeal bond.*—Before the appeal is heard, the
27 taxpayer shall file with the clerk of the circuit court a
28 cash bond or a corporate surety bond approved by the
29 clerk. The surety must be qualified to do business in this
30 state. These bonds shall be conditioned that the taxpayer
31 shall perform the orders of the court. The penalty of this
32 bond shall be not less than the total amount of tax,
33 additions to tax, penalties and interest for which the
34 taxpayer was found liable in the administrative decision
35 of the tax commissioner. Notwithstanding the foregoing
36 and in lieu of such bond, the tax commissioner may, upon
37 a sufficient showing by the taxpayer, certify to the
38 clerk of the circuit court that the assets of the taxpayer
39 subject to the lien imposed by section twelve of this
40 article, or other indemnification, are adequate to secure
41 performance of the orders of the court.

42 (e) *Appeal.*—The court shall hear the appeal and de-
43 termine anew all questions submitted to it on appeal
44 from the determination of the tax commissioner. In
45 such appeal a certified copy of the tax commissioner's
46 notice of assessment and administrative decision thereon
47 shall be admissible and shall constitute prima facie
48 evidence of the tax due under the provisions of those
49 articles of this chapter to which this article is applicable.
50 The court shall render its decree thereon and a certified
51 copy of said decree shall be filed by the clerk of the
52 court with the tax commissioner who shall then correct
53 the assessment in accordance with the decree. An appeal
54 may be taken by the taxpayer or the tax commissioner to
55 the supreme court of appeals of this state.

§11-10-11. Collection.

1 (a) *General.*—The tax commissioner shall collect the
2 taxes, additions to tax, penalties and interest imposed by
3 this article or any of the other articles of this chapter

4 to which this article is applicable. In addition to all
5 other remedies available for the collection of debts due
6 this state, the tax commissioner may proceed by fore-
7 closure of the lien provided in section twelve, or by
8 distraint and sale under section thirteen.

9 (b) *Prerequisite to final settlement of contracts with*
10 *nonresident contractor; user personally liable.*—

11 (1) Any person contracting with a nonresident con-
12 tractor subject to the taxes imposed by articles thirteen,
13 twenty-one and twenty-four of this chapter, shall with-
14 hold payment, in the final settlement of such contract, of
15 such sufficient amount, not exceeding six percent of the
16 contract price, as will in such person's opinion be suffi-
17 cient to cover such taxes, until the receipt of a certificate
18 from the tax commissioner to the effect that the above
19 referenced taxes imposed against the nonresident con-
20 tractor have been paid or provided for.

21 (2) If any person shall fail to withhold as provided
22 herein, such person shall be personally liable for the
23 payment of all such taxes attributable to the contract,
24 not to exceed six percent of the contract price. The same
25 shall be recoverable by the tax commissioner by appro-
26 priate legal proceedings.

27 (c) *Prerequisite for issuance of certificate of dissolu-*
28 *tion or withdrawal of corporation.*—The secretary of state
29 shall withhold the issuance of any certificate of dissolu-
30 tion or withdrawal in the case of any corporation orga-
31 nized under the laws of this state, or organized under
32 the laws of another state and admitted to do business in
33 this state, until the receipt of a certificate from the tax
34 commissioner to the effect that every tax administered
35 under this article imposed against any such corporation
36 has been paid or provided for, or that the applicant is
37 not liable for any tax administered under this article.

38 (d) *Prerequisite to final settlement of contract with*
39 *this state or political subdivision; penalty.*—All state,
40 county, district and municipal officers and agents making
41 contracts on behalf of this state or any political sub-

42 division thereof shall withhold payment, in the final
43 settlement of any such contract, until the receipt of a
44 certificate from the tax commissioner to the effect that
45 the taxes imposed by articles thirteen, twenty-one and
46 twenty-four of this chapter against the contractor have
47 been paid or provided for. If the transaction embodied
48 in such contract or the subject matter of the contract is
49 subject to county or municipal business and occupation
50 tax, then such payment shall also be withheld until re-
51 ceipt of a release from such county or municipality to
52 the effect that all county or municipal business and occu-
53 pation taxes levied or accrued against the contractor have
54 been paid. Any official violating this section shall be
55 subject to a civil penalty of one thousand dollars, re-
56 coverable as a debt in a civil action brought by the tax
57 commissioner.

58 (e) *Limited effect of tax commissioner's certificates.*—
59 The certificates of the tax commissioner provided for in
60 subsections (b), (c) and (d) of this section shall not
61 bar subsequent investigations, assessments, refunds and
62 credits with respect to the taxpayer.

63 (f) *Payment when person sells out or quits business;*
64 *lien.*—

65 (1) If any person subject to any tax administered
66 under this article sells out his or its business or stock
67 of goods, or ceases doing business, any tax, additions to
68 tax, penalties and interest imposed by this article or any
69 of the other articles of this chapter to which this article
70 is applicable shall become due and payable immediately
71 and such person shall, within thirty days after selling
72 out his or its business or stock of goods or ceasing to do
73 business, make a final return or returns and pay any tax
74 or taxes which may be due. The unpaid amount of any
75 such tax shall be a lien upon the property of such person.

76 (2) The successor in business of any such person
77 shall withhold so much of the purchase money as will
78 satisfy any tax, additions to tax, penalties and interest
79 which may be due until the former owner shall produce

80 a receipt from the tax commissioner evidencing the pay-
81 ment thereof. If the purchaser of a business or stock of
82 goods shall fail to withhold purchase money as provided
83 above, and if any such tax, additions to tax, penalties
84 and interest remain unpaid after expiration of the thirty-
85 day period allowed for payment thereof, the purchaser
86 shall be personally liable for the payment of any such
87 tax, additions to tax, penalties and interest and the same
88 shall be recoverable by the tax commissioner by action
89 as provided by this section.

90 (g) *Injunction.*—If the taxpayer fails for a period of
91 more than sixty days to fully comply with any of the
92 provisions of this article or of any other article of this
93 chapter to which this article is applicable, the tax com-
94 missioner may institute a proceeding to secure an in-
95 junction to restrain the taxpayer from doing business in
96 this state until the taxpayer fully complies with the
97 provisions of this article or any of such other articles.

98 (h) *Costs.*—In any proceeding under this section, upon
99 judgment or decree for the tax commissioner, he shall
100 be awarded his costs.

§11-10-12. Liens.

1 (a) *General.*—Any tax, additions to tax, penalties
2 or interest due and payable under this article or any
3 of the other articles of this chapter to which this article
4 is applicable shall be a debt due this state. It shall
5 be a personal obligation of the taxpayer and shall be
6 a lien upon the real and personal property of the tax-
7 payer.

8 (b) *Duration of lien.*—The lien created by this sec-
9 tion shall continue until the liability for the tax, addi-
10 tions to tax, penalties and interest is satisfied or be-
11 comes unenforceable by reason of lapse of time.

12 (c) *Recordation.*—The lien created by this section
13 shall be subject to the restrictions and conditions em-
14 bodied in article ten-c, chapter thirty-eight of this code
15 and any amendment made or which may hereafter be
16 made thereto.

17 (d) *Release.*—The tax commissioner, pursuant to
18 rules or regulations prescribed by him, may issue his
19 certificate of release of any lien created pursuant to this
20 section when the debt is adequately secured by bond
21 or other security. He shall issue his certificate of re-
22 lease when the debt secured has been satisfied. The
23 certificate of release shall be issued in duplicate. One
24 copy shall be forwarded to the taxpayer, and the other
25 copy shall be forwarded to the clerk of the county com-
26 mission of the county wherein the lien is recorded. The
27 clerk of the county commission shall record the release
28 without payment of any fee and such recordation shall
29 constitute a release and full discharge of the lien.

§11-10-13. *Distrain.*

1 If any tax administered under this article is required
2 to be paid at the time a return is filed and if any portion
3 of such tax is not so paid, or if an assessment of tax is
4 made by the tax commissioner and notice thereof is
5 given as required by this article and such assessment
6 has become final and is not subject to administrative
7 or judicial review, the tax commissioner may issue a
8 warrant directed to the sheriff of any county of this
9 state commanding him to levy upon and sell the real
10 and personal property, including intangibles represented
11 by negotiable evidences of indebtedness, of the tax-
12 payer owning the same found within his county for
13 the payment of the amount of all taxes, additions to
14 tax, penalties and interest accrued and unpaid under
15 any of the articles of this chapter to which this article
16 is applicable. A sheriff so collecting taxes due here-
17 under shall be entitled to compensation in the amount
18 of all additions to tax collected over and above the prin-
19 cipal amount of tax, penalties and interest due, but in
20 no case shall such compensation exceed one hundred
21 dollars. The sheriff shall return such warrant to the
22 tax commissioner and pay to him the money collected
23 by virtue thereof by the time specified in the warrant,
24 but not later than sixty days from the date of such
25 warrant. In the discretion of the tax commissioner, a
26 warrant of like terms, force and effect may be issued

27 and directed to any officer or employee of the state
28 tax department and in the execution thereof such officer
29 or employee shall have all powers conferred by law
30 upon sheriffs, but shall be entitled to no fee or compen-
31 sation in excess of all reasonable and necessary ex-
32 penses actually paid in the performance of such duty.
33 If a warrant is returned not satisfied in full, the tax
34 commissioner may proceed to enforce the claim for taxes
35 by civil action.

§11-10-14. Overpayments; credits; refunds; and limitations.

1 (a) *Refunds or credits of overpayments.*—In the case
2 of overpayment of any tax, additions to tax, penalties
3 or interest imposed by this article or any of the other
4 articles of this chapter to which this article is applicable,
5 the tax commissioner shall, subject to the provisions
6 of this article, refund to the taxpayer the amount of the
7 overpayment or, if the taxpayer so elects, apply the
8 same as a credit against the taxpayer's liability for such
9 tax for other periods. The refund or credit shall in-
10 clude any interest due the taxpayer under the provisions
11 of section seventeen of this article.

12 (b) *Refunds or credit of gasoline and special fuel*
13 *excise tax or motor carrier road tax.*—Any person who
14 seeks a refund or credit of gasoline and special fuel
15 excise tax under the provisions of sections ten, eleven
16 or twelve of article fourteen or the provisions of sec-
17 tion nine or eleven of article fourteen-a of this chapter
18 shall file his claim for refund or credit in accordance
19 with the provisions of such sections. The ninety-
20 day time period for determination of these claims pro-
21 vided in subsection (d) shall not apply to such claims
22 for refund or credit.

23 (c) *Claims for refund or credit.*—No refund or credit
24 shall be made unless the taxpayer has timely filed a
25 claim for refund or credit with the tax commissioner.
26 A person against whom an assessment or an adminis-
27 trative decision has become final shall not be entitled
28 to file a claim for refund or credit with the tax com-

29 missioner as prescribed herein. The tax commissioner
30 shall determine the taxpayer's claim and notify the tax-
31 payer in writing of his determination.

32 (d) *Petition for refund or credit; hearing.*—If the
33 taxpayer is not satisfied with the tax commissioner's
34 determination of his claim for refund or credit, or if
35 the tax commissioner has not determined the taxpayer's
36 claim within ninety days after such claim was filed, or
37 six months in the case of claims for refund or credit
38 of the taxes imposed by articles twenty-one and twenty-
39 four of this chapter, after the filing thereof, the tax-
40 payer may file with the tax commissioner, either per-
41 sonally or by certified mail, a petition for refund or
42 credit: *Provided*, That no petition for refund or credit
43 may be filed more than sixty days after the taxpayer
44 is served with notice of denial of his claim. The petition
45 for refund or credit shall be in writing, verified under
46 oath by the said taxpayer or his duly authorized agent
47 having knowledge of the facts, and shall set forth with
48 particularity the items of the determination objected to,
49 together with the reasons for the objections. When a
50 petition for refund or credit is properly filed, the pro-
51 cedures for hearing and for decision prescribed in sec-
52 tion nine shall be followed.

53 (e) *Appeal.*—An appeal from the tax commissioner's
54 decision upon the petition for refund or credit may be
55 taken by the taxpayer in the same manner and under
56 the same procedure as that set forth in section eleven
57 relating to an appeal from the tax commissioner's deci-
58 sion on a petition for reassessment, but no bond shall
59 be required of the taxpayer.

60 (f) *Decision of the court.*—Where the appeal is to
61 review an administrative decision on a petition for re-
62 fund or credit, the court may determine the legal rights
63 of the parties but in no event shall it enter a judgment
64 for money.

65 (g) *Refund made or credit established.*—The tax
66 commissioner shall promptly issue his requisition on
67 the treasury or establish a credit, as requested by the

68 taxpayer, for any amount finally administratively or
69 judicially determined to be an overpayment of any tax
70 administered under this article. The auditor shall issue
71 his warrant on the treasurer for any refund req-
72 uisitioned under this subsection payable to the tax-
73 payer entitled to the refund, and the treasurer shall
74 pay such warrant out of the fund into which the amount
75 so refunded was originally paid.

76 (h) *Forms for claim for refund or a credit; where*
77 *return shall constitute claim.*—The tax commissioner
78 may prescribe by rule or regulation the forms for claims
79 for refund or credit. Notwithstanding the foregoing,
80 where the taxpayer has overpaid the tax imposed by
81 article twenty-one or article twenty-four of this chapter,
82 a return signed by the taxpayer which shows on its
83 face that an overpayment of such tax has been made shall
84 constitute a claim for refund or a credit.

85 (i) *Remedy exclusive.*—The procedure provided by
86 this section shall constitute the sole method of obtaining
87 any refund or any credit, it being the intent hereof
88 that the procedure set forth in this article shall be in
89 lieu of any other remedy, including the uniform de-
90 claratory judgments act embodied in article thirteen
91 chapter fifty-five of this code and the provisions of section
92 two-a, article one of this chapter.

93 (j) *Applicability of this section.*—The provisions of
94 this section shall apply to refunds or credits of any tax,
95 additions to tax, penalties or interest imposed by any
96 article of this chapter to which this article is applicable,
97 for any refund or credit sought after the first day of
98 July, one thousand nine hundred seventy-eight, irre-
99 spective of whether the claim of refund or credit is for
100 a tax period ending prior to that date.

101 (k) *Erroneous refund or credit.*—If the tax commis-
102 sioner believes that an erroneous refund has been made
103 or an erroneous credit has been established, he may
104 proceed to investigate and may make an assessment or
105 institute civil action to recover the amount of such re-
106 fund or credit.

107 (1) *Limitation on claims for refund or credit.*—

108 (1) General rule.—Whenever a taxpayer claims to be
109 entitled to a refund or credit of any tax, additions to tax,
110 penalties or interest paid into the treasury of this state,
111 such taxpayer shall, except as provided in subsection
112 (d), file his claim within three years after the due date
113 of the return in respect of which the tax was imposed
114 or within two years from the date the tax was paid,
115 whichever of such periods expires the later, or if no
116 return was filed by the taxpayer, within two years from
117 the time the tax was paid, and not thereafter.

118 (2) Extension of time for filing claim by agreement.
119 —The tax commissioner and the taxpayer may enter into
120 written agreement to extend the period within which
121 the taxpayer may file a claim for refund or credit, which
122 period shall not exceed two years. The period so agreed
123 upon may be extended for additional periods not in
124 excess of two years each by subsequent agreements in
125 writing made before the expiration of the period pre-
126 viously agreed upon.

127 (3) Special rule where agreement to extend time
128 for making an assessment.—Notwithstanding subdivi-
129 sions (1) and (2) of this subsection, if an agreement is
130 made under the provisions of section fifteen of this article
131 extending the time period in which an assessment of a
132 tax can be made, then the time period for filing a claim
133 for refund or credit for an overpayment of the same
134 tax made during the periods subject to assessment under
135 the extension agreement shall also be extended for the
136 period of the extension agreement plus ninety days.

137 (4) Overpayment of federal tax.—Notwithstanding
138 subdivisions (1) and (2) of this subsection, in the event
139 of a final determination by the United States internal
140 revenue service or other competent authority of an over-
141 payment in the taxpayer's federal income tax liability,
142 the period of limitation upon claiming a refund reflect-
143 ing such final determination in taxes imposed by articles
144 twelve-a, twenty-one and twenty-four of this chapter
145 shall not expire until six months after such determination

146 is made by the United States internal revenue ser-
147 vice or other competent authority.

148 (5) Deficiencies in business and occupation or carrier
149 income taxes.—Notwithstanding subdivisions (1) and (2)
150 of this subsection, in the event of a final administrative
151 or judicial determination of a deficiency in the tax-
152 payer's liability for taxes imposed by articles twelve-a
153 and thirteen of this chapter, the period of limitation
154 upon claiming a refund reflecting such final determina-
155 tion in the taxes imposed by articles twenty-one and
156 twenty-four of this chapter shall not expire until six
157 months after such final determination is made.

158 (6) Exception for gasoline and special fuel excise tax
159 and motor carrier road tax.—This subsection (k) shall not
160 apply to refunds of gasoline and special fuel excise tax
161 or motor carrier road tax sought under the provisions
162 of article fourteen or article fourteen-a of this chap-
163 ter.

164 (7) Transition rules.—The general rule prescribed in
165 subdivision (1) of this subsection shall be subject to
166 the following transition rules:

167 (A) *For tax periods ending prior to July 1, 1967.*—
168 With respect to any tax imposed for any period ending
169 prior to the first day of July, one thousand nine hundred
170 sixty-seven, the taxpayer must file his claim within three
171 years from the date of payment and not thereafter.

172 (B) *For tax periods ending on or after July 1, 1967,*
173 *but prior to January 1, 1979.*—With respect to any tax
174 imposed for any period ending after the first day of
175 July, one thousand nine hundred sixty-seven, but prior to
176 the first day of January, one thousand nine hundred
177 seventy-nine, the taxpayer must file his claim within five
178 years from the date of payment and not thereafter.

179 (C) *For tax periods ending after December 31, 1978,*
180 *but prior to January 1, 1980.*—With respect to any tax
181 imposed for any period ending after the thirty-first day
182 of December, one thousand nine hundred seventy-eight,
183 but prior to the first day of January, one thousand nine

184 hundred eighty, the taxpayer must file his claim within
185 four years from the date of payment and not thereafter.

§11-10-15. Limitations on assessment.

1 (a) *General rule.*—The amount of any tax, additions
2 to tax, penalties and interest imposed by this article or
3 any of the other articles of this chapter to which this
4 article is applicable shall be assessed within three years
5 after the due date of the returns: *Provided*, That in the
6 case of a false or fraudulent return filed with the intent
7 to evade tax, or in case no return is filed, the assessment
8 may be made at any time.

9 (b) *Extension by agreement.*—The tax commissioner
10 and the taxpayer may enter into written agreements to
11 extend the period within which the tax commissioner
12 may make an assessment against the taxpayer which
13 period shall not exceed two years. The period so agreed
14 upon may be extended for additional periods not in excess
15 of two years each by subsequent agreements in writing
16 made before the expiration of the period previously
17 agreed upon.

18 (c) *Deficiency in federal tax.*—Notwithstanding sub-
19 section (a), in the event of a final determination by the
20 United States internal revenue service or other com-
21 petent authority of a deficiency in the taxpayer's federal
22 income tax liability, the period of limitation, upon assess-
23 ment of a deficiency reflecting such final determination
24 in the net income tax imposed by article twelve-a and
25 the taxes imposed by articles twenty-one and twenty-
26 four of this chapter, shall not expire until ninety days
27 after the tax commissioner is advised of the determina-
28 tion by the taxpayer as provided in section six-a of
29 said article twelve-a, section fifty-nine of said article
30 twenty-one and section twenty of said article twenty-
31 four, or until the period of limitations upon assessment
32 provided in subsection (a) has expired, whichever ex-
33 pires the later.

34 (d) *Transition rules.*—The general rule prescribed in
35 subsection (a) of this section shall be subject to the
36 following transition rules:

37 (1) *For tax periods ending prior to January 1, 1979.—*
38 With respect to any tax period ending prior to the first
39 day of January, one thousand nine hundred seventy-
40 nine, the amount of tax, additions to tax, penalties and
41 interest shall be assessed within five years after the due
42 date of the return or the date the return was filed,
43 whichever expires the later, except as provided for a
44 false or fraudulent return.

45 (2) *For tax periods ending after December 31, 1978,*
46 *but prior to January 1, 1980.—*With respect to any tax
47 imposed for any period ending after the thirty-first day
48 of December, one thousand nine hundred seventy-eight,
49 but prior to the first day of January, one thousand nine
50 hundred eighty, the amounts of tax, additions to tax,
51 penalties and interest shall be assessed within four years
52 after the due date of the return or the date the return was
53 filed, whichever expires the later, except as provided
54 for a false or fraudulent return.

§11-10-16. Limitations on collection.

1 (a) *Where assessment is issued.—*Every proceeding
2 instituted by the tax commissioner for the collection of
3 the amount found to be due under an assessment which
4 has become final of any tax, additions to tax, penalties or
5 interest imposed by this article or any of the other articles
6 of this chapter to which this article is applicable, irre-
7 spective of whether such proceeding shall be instituted in
8 a court or by utilization of other methods provided by
9 law for the collection of such tax, additions to tax, penalty
10 or interest, shall be brought or commenced within five
11 years after the date on which such assessment has be-
12 come final.

13 (b) *Where assessment is not issued.—*Every proceeding
14 instituted by the tax commissioner for the collection of
15 the amount determined to be due by methods provided by
16 law other than the issuance of an assessment, of any tax,
17 additions to tax, penalties or interest imposed by this
18 article or any of the other articles of this chapter to
19 which this article is applicable, irrespective of whether
20 such proceeding shall be instituted in a court or by utili-

21 zation of other methods provided by law for the collec-
22 tion of such tax, additions to tax, penalties or interest,
23 shall be brought or commenced within five years after the
24 date on which the taxpayer filed the annual return re-
25 quired to be filed by any of the articles of this chapter
26 and, if no annual return is required, such five-year period
27 shall begin on the day after the latest periodical return
28 required to be filed in any year is filed.

29 (c) *Exception as to false or fraudulent return or no*
30 *return.*—In the case of the filing of a false or fraudulent
31 return, or in case no return is filed, the limitations speci-
32 fied in this section shall not apply.

33 (d) *Exception as to inheritance tax liens.*—This section
34 shall not apply to, or in any manner affect, the inheritance
35 tax liens created by sections nine and eighteen, article
36 eleven of this chapter.

37 (e) *Extension of time for institutions of collection pro-*
38 *ceedings by agreement.*—The tax commissioner and the
39 taxpayer may enter into written agreement to extend the
40 period within which the tax commissioner may institute
41 proceedings for the collection of the amount found to be
42 due under an assessment which has become final, or the
43 amount determined to be due by methods provided by
44 law other than the issuance of the assessment, of any tax,
45 additions to tax, penalties or interest imposed by this
46 article or any of the other articles of this chapter to
47 which this article is applicable. Such period shall not
48 exceed two years. The period so agreed upon may be ex-
49 tended for additional periods not in excess of two years
50 each by subsequent agreements in writing made before
51 the expiration of the period previously agreed upon.

§11-10-17. Interest.

1 (a) *Underpayments.*—If any amount of a tax admin-
2 istered under this article is not paid on or before the last
3 date prescribed for payment, interest on such amount at
4 the rate of eight percent per annum shall be paid for
5 the period from such last date to the date paid. For
6 purposes of this subsection, the last date prescribed for

7 payment shall be the due date of the return and shall
8 be determined without regard to any extension of time
9 for payment.

10 (b) *Underpayment of estimated business and occupa-*
11 *tion tax.*—In the case of an underpayment of estimated
12 tax by a person who is taxable under the provisions of
13 article thirteen of this chapter, there shall be added to
14 the amount of tax due under section four of said article
15 thirteen, from the date such tax should have been paid,
16 interest in the amount of eight percent per annum. An
17 underpayment of estimated tax means the application of
18 rates set forth in this article against estimated values or
19 gross income which constitutes less than eighty percent
20 of actual receipts.

21 (c) *Erroneous refund or credit.*—If any refund is
22 made or credit is established upon an erroneous claim for
23 refund or credit, interest on such amount refunded or
24 credited at the rate of eight percent per annum shall be
25 paid by the claimant from the date the refund was made
26 or the credit was taken to the date such amount is re-
27 covered.

28 (d) *Overpayments.*—Interest shall be allowed and
29 paid at the rate of eight percent per annum upon any
30 amount which has been finally administratively or judi-
31 cially determined to be an overpayment in respect of
32 each tax administered under this article except the taxes
33 imposed by articles twelve, fourteen and fourteen-a of
34 this chapter. Such interest shall be allowed and paid
35 for the period commencing with the date of the filing by
36 taxpayer of a claim for refund or credit with the tax
37 commissioner and ending with the date of final adminis-
38 trative or judicial determination of overpayment. The
39 tax commissioner shall, within thirty days after such
40 final determination of entitlement to refund, issue his
41 requisition or establish a credit as requested by the
42 taxpayer. Whenever the tax commissioner fails or re-
43 fuses to issue any such requisition or establish such credit
44 within said thirty-day period, the interest provided
45 herein shall commence to accrue anew until performance
46 by the tax commissioner. The acceptance of such refund

47 check or credit shall be without prejudice to any right
48 of the taxpayer to claim any additional overpayment
49 and interest thereon.

50 (e) *Applicable rules.*—

51 (1) No interest payable on tax refunded or credited
52 within ninety days after claim for refund or credit is
53 filed.—In the event of any overpayment of any tax ad-
54 ministered under this article, except the taxes imposed
55 by articles twenty-one and twenty-four of this chapter,
56 where the tax commissioner issues his requisition or
57 establishes a credit as requested by the taxpayer within
58 ninety days after the date of the filing by the taxpayer
59 of a claim for refund or credit, no interest shall be
60 allowed under this section.

61 (2) No interest payable where personal income tax
62 and corporation net income tax refunded or credited
63 within six months after claim for refund or credit is
64 filed.—In the event of any overpayment of the taxes
65 imposed by articles twenty-one and twenty-four of this
66 chapter, where the tax commissioner issues his requisi-
67 tion or establishes a credit as requested by the taxpayer
68 within six months after the date of the filing by the
69 taxpayer of a claim for refund or credit, no interest shall
70 be allowed under this section.

71 (3) Interest treated as tax.—Interest prescribed under
72 this section on any tax shall be collected and paid in
73 the same manner as taxes.

74 (4) No interest on interest.—No interest under this
75 section shall be imposed on the interest provided by this
76 section.

77 (5) Interest on penalties or additions to tax.—Interest
78 shall be imposed under subsection (a) on any assessable
79 penalty or additions to tax only if such penalty or addi-
80 tions to tax is not paid within fifteen days from the date
81 of notice and demand therefor, and in such case interest
82 shall be imposed only for the period from the date of
83 the notice and demand to the date of payment.

84 (6) Payments made within fifteen days after notice
85 and demand.—If notice and demand is made for payment
86 of any amount, and if such amount is paid within fifteen
87 days after the date of such notice and demand, interest
88 under this section on the amount so paid shall not be
89 imposed for the period after the date of such notice and
90 demand.

§11-10-18. Additions to tax.

1 (a) *Failure to file return or pay tax due.*—

2 (1) In the case of failure to make or file a required re-
3 turn of any tax administered under this article, unless it
4 is shown that such failure is due to reasonable cause and
5 not due to willful neglect, there shall be added to the
6 amount required to be shown as tax on such return five
7 percent of the amount of such tax if the failure is for more
8 than one month, with an additional five percent for each
9 additional month or fraction thereof during which such
10 failure continues, not exceeding twenty-five percent in
11 the aggregate: *Provided*, That this addition to tax shall
12 be imposed only on the net amount of tax due;

13 (2) In the case of failure to pay the amount shown as
14 tax on any required return of any tax administered under
15 this article on or before the date prescribed for payment
16 of such tax (determined with regard to any extension of
17 time for payment), unless it is shown that such failure is
18 due to reasonable cause and not due to willful neglect,
19 there shall be added to the amount shown as tax on such
20 return one half of one percent of the amount of such tax
21 if the failure is for not more than one month, with an
22 additional one half of one percent for each additional
23 month or fraction thereof during which such failure
24 continues, not exceeding twenty-five percent in the aggre-
25 gate: *Provided, however*, That the addition to tax shall
26 be imposed only on the net amount of tax due.

27 (b) *Limitation and special rule.*—In computing addi-
28 tions to tax under this section, only one of the para-
29 graphs of subsection (a) shall be applicable to any one
30 taxable period. If the correct amount of tax due is less

31 than the amount shown on the return, paragraphs (1)
32 and (2) of subsection (a) shall apply only to the lower
33 amount.

34 (c) *Negligence or intentional disregard of rules and*
35 *regulations.*—In the case of underpayment of any tax
36 administered under this article which is due to negli-
37 gence or intentional disregard of rules and regulations
38 (but without intent to defraud), there shall be added to
39 the amount of tax due five percent of the amount of
40 such tax if the underpayment due to negligence or in-
41 tentional disregard of rules and regulations is for more
42 than one month, with an additional five percent for each
43 additional month or fraction thereof during which such
44 underpayment continues, not exceeding twenty-five per-
45 cent in the aggregate: *Provided*, That these additions to
46 tax shall be imposed only on the net amount of tax due
47 and shall be in lieu of the additions to tax provided for
48 in subsection (a).

49 (d) *False or fraudulent return.*—In the case of the
50 filing of any false or fraudulent return with intent to
51 evade any such tax, or in the case of willful failure to
52 file a return with intent to evade tax, there shall be
53 added to the tax due an amount equal to fifty percent
54 thereof which shall be in lieu of the additions to tax
55 provided for in subsections (a) and (c). The burden of
56 proving fraud, willfulness or intent to evade tax shall
57 be upon the tax commissioner.

58 (e) *Additions to tax treated as tax.*—Additions to tax
59 prescribed under this section on any tax shall be assessed,
60 collected and paid in the same manner as taxes.

§11-10-19. Penalties.

1 (a) *Failure to collect, account for, and pay over tax,*
2 *or attempt to defeat or evade tax.*—Any person required
3 to collect, account for and pay over any tax administered
4 under this article, who willfully fails truthfully to account
5 for and pay over such tax, and any person who willfully
6 attempts in any manner to evade or defeat any such tax
7 or the payment thereof, shall, in addition to other penal-

8 ties provided by law, be liable for a money penalty equal
9 to the total amount evaded, or not collected, or not ac-
10 counted for and paid over. No additions to tax shall be
11 imposed under section eighteen for any offense to which
12 this subsection is applicable.

13 (b) *Fraudulent statement or failure to furnish state-*
14 *ment to employees.*—Any person required under the
15 provisions of section seventy-two, article twenty-one of
16 this chapter to furnish a statement to an employee, who
17 willfully furnishes a false or fraudulent statement, or
18 who willfully fails to furnish a statement in the manner,
19 at the time, and showing the information required by
20 said section, or regulations prescribed thereunder, shall
21 for each such failure be subject to a money penalty of
22 fifty dollars.

23 (c) *Fraudulent claim for refund or credit.*—In the
24 case of the filing of a false or fraudulent claim for refund
25 or credit with the intent to defraud this state, there shall
26 be added to such amount erroneously refunded or credited
27 a penalty equal to fifty percent thereof. No additions to
28 tax shall be imposed under section eighteen for any
29 offense to which this subsection is applicable. The burden
30 of proving fraud or intent to defraud shall be upon the
31 tax commissioner.

32 (d) *Collection of penalty.*—Any money penalty may
33 be collected in the same way as the tax imposed by this
34 article.

§11-10-20. Effective date; transition rules.

1 (a) The provisions of this article shall take effect on
2 the first day of July, one thousand nine hundred seventy-
3 eight, except to the extent modified in this section.

4 (b) The provisions of sections one through fourteen
5 shall apply on and after the effective date of this article
6 irrespective of when the tax liability arose: *Provided,*
7 That when the assessment has been made prior to the
8 effective date of this article, the rights and duties of the
9 taxpayer and the state of West Virginia shall be de-
10 termined with regard to the assessment, hearing and

11 appeals therefrom by the laws of the state of West Vir-
12 ginia as they existed prior to the effective date hereof,
13 which laws shall be preserved and continued with respect
14 to such assessment, hearing and appeals as fully and
15 completely as if set forth in extenso herein.

16 (c) The provisions of sections fifteen through nineteen
17 shall apply only with respect to taxes imposed for periods
18 ending on or after the effective date of this article.
19 Tax liabilities, if any, arising prior to the effective date
20 of this article shall, with respect to additions to tax,
21 penalties and interest, be determined, administered and
22 assessed as if this act and the sections and articles it
23 amends and reenacts or repeals had not been amended
24 and reenacted or repealed, and the rights and duties
25 of the taxpayers and the state of West Virginia shall
26 be fully and completely preserved.

27 (d) Notwithstanding subsection (c) above, the pro-
28 visions of sections sixteen, seventeen, eighteen and nine-
29 teen of this article may apply to tax liabilities arising
30 during any period prior to the effective date of this
31 article if (1) the tax commissioner has not issued an
32 assessment with respect to such prior period, or (2)
33 the tax commissioner has issued such assessment which is
34 or may be the subject of a petition for reassessment and
35 his decision thereon has not been issued as of the effective
36 date of this article, and the taxpayer elects to have all
37 of the provisions of sections sixteen, seventeen, eighteen
38 and nineteen of this article apply as fully as if the same
39 had been in effect at the time the tax liability arose.
40 Such election shall be made within sixty days after
41 assessment or within sixty days after the effective date
42 of this article, whichever last occurs. No election under
43 this subsection shall serve to shorten the statute of lim-
44 itations upon assessments otherwise applying to tax
45 liabilities arising prior to the effective date of this article.

§11-10-21. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held uncon-
3 stitutional or invalid, such unconstitutionality or in-

4 validity shall not affect, impair or invalidate other pro-
5 visions or applications of the article, and to this end
6 the provisions of this article are declared to be severable.

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

- §11-11-9. Lien for tax; limitations upon collection.
- §11-11-10. Extension of time pending settlement of estate.
- §11-11-11. Payments and collection.
- §11-11-13. Report of transfers by county commission.
- §11-11-14a. Transfer of bonds or stocks standing in the name of decedent; reports by corporations.
- §11-11-14b. Annuity and investment contracts; payments to beneficiaries; notices to tax commissioner; penalties.
- §11-11-15. Assessment by tax commissioner.
- §11-11-16. Transfers not reported to commissioner.
- §11-11-18. Amended assessment; recordation.
- §11-11-20. Settlement by tax commissioner of dispute as to relationship between decedent and transferee.
- §11-11-25. Liability of fiduciaries and sureties.
- §11-11-27. Inspection of books by tax commissioner; crime.
- §11-11-29. General procedure and administration.

§11-11-9. Lien for tax; limitations upon collection.

1 Notwithstanding the limitations found in article ten
2 of this chapter, all taxes imposed by this article upon
3 any transfer, and the additions to tax, penalties and
4 interest that may accrue thereon, shall, until paid, be
5 and remain a charge and lien upon the property trans-
6 ferred, superior to any lien created after such transfer,
7 and no title shall vest or be transferred as to any such
8 property, except subject to the lien for such taxes, addi-
9 tions to tax, penalties and interest, and no such property
10 shall be transferred or delivered, in whole or in part,
11 until the payment into the treasury of the state of the
12 amount of such tax: *Provided*, That this restriction shall
13 not apply to the transfer or delivery of twenty-five hun-
14 dred dollars or less from the balance of a joint bank
15 account of which the decedent was a co-owner when such
16 transfer or delivery is to the surviving co-owner or co-
17 owners and such a co-owner or co-owners are within
18 the class designated in section two (a) of this article.
19 The person to whom the property is transferred, if he
20 shall receive the same before the tax thereon is paid,
21 and the executors, administrators and trustees having

22 charge of every estate so transferred, shall be personally
23 liable for such tax, additions to tax, penalties and in-
24 terest until its payment: *Provided, however,* That such
25 lien and the tax, additions to tax, penalties and interest
26 represented thereby shall not be enforceable or col-
27 lectible either against the property or from any person
28 whatsoever after the expiration of ten years from and
29 after the death of the decedent whose property is sub-
30 ject to tax under the provisions of this article, whether
31 there has been a qualification or not upon the estate of
32 the decedent. The limitation aforesaid shall apply re-
33 gardless of whether or not a personal representative
34 has been appointed or qualified upon the estate of the
35 decedent: *Provided further,* That the limitation of ten
36 years prescribed by this section shall not be construed
37 to apply to any suit or proceeding now pending and
38 undetermined, commenced prior to the tenth day of June,
39 one thousand nine hundred forty-nine, for the enforce-
40 ment of any such lien otherwise legally enforceable but
41 for said limitation.

§11-11-10. Extension of time pending settlement of estate.

1 Whenever it shall be necessary in the settlement of
2 any estate to retain property or funds for the purpose of
3 paying any liability, the amount or validity of which
4 is not determined, the time for payment of the whole
5 or a proportionate part of such tax may be extended to
6 await disposition of such claim.

§11-11-11. Payments and collection.

1 All taxes imposed by this article shall be due and
2 payable at the death of the transferor and if paid within
3 ten months after the death of the transferor, a discount
4 of three percent shall be allowed and deducted. If not
5 paid within eleven months after the death of the trans-
6 feror, taxes due under this article shall be subject to
7 the provisions of article ten of this chapter regarding
8 additions to tax, penalties and interest, to be computed
9 from the expiration of eleven months from the date of
10 the death of the transferor until paid. The tax commis-
11 sioner may upon written application extend the time

12 for payment of such taxes on such terms and conditions
13 as he may require.

14 The provisions of this section as amended, to take
15 effect on the first day of July, one thousand nine hun-
16 dred seventy-six, shall apply to estates of all decedents
17 dying on or after the first day of July, one thousand
18 nine hundred seventy-six and the provisions of this sec-
19 tion eleven, article eleven, chapter eleven of the code of
20 West Virginia, one thousand nine hundred thirty-one,
21 as amended, in effect prior to the first day of said July,
22 shall apply to the estates of all decedents dying before
23 said date.

§11-11-13. Report of transfers by county commission.

1 The county commissions of all counties of the state, or
2 the clerks thereof, shall make reports in all decedent
3 estates and in all cases where a transfer otherwise occurs
4 when required by the tax commissioner. Such clerks
5 may ascertain when a transfer has occurred by reference
6 to the filing of a will, the appointment of a fiduciary,
7 or the admission to record of a deed or other writing
8 intended to take effect in possession or enjoyment, at or
9 after the death of the maker thereof, or appearing to be
10 in contemplation of his death, or be based on any infor-
11 mation otherwise derived, and shall report the same to
12 the tax commissioner. Such a report shall be made
13 quarterly as soon as possible after the first day of Janu-
14 ary, April, July and October in each year, and shall
15 relate to all such matters as were not covered by any
16 previous report. A special report may be made by the
17 clerk at any time. If there be no reason to believe that
18 any such transfer has been made since the date of the
19 last preceding report, that fact shall be stated in such
20 quarterly report, but if there be reason to believe that
21 such a transfer has been made, such quarterly or special
22 report shall show the nature thereof; the name of the
23 decedent, deviser, grantor, vendor, bargainor or donor;
24 the name or other description, and the address of the
25 person or corporation to or for whose use or benefit any
26 property may be transferred, and the relationship, if

27 any, between such person and the person from whom the
28 property is transferred, and the relationship, if any, be-
29 tween such person and the person from whom the
30 property is transferred, as far as the commission or clerk
31 may have any information respecting such matters; the
32 nature of the property transferred, with such general
33 description and approximate valuation as the commis-
34 sion or clerk may be able to give. Any other person,
35 whether interested in such property or not, may make
36 a like report to the tax commissioner. Every such report,
37 whether by the clerk or by any other person, shall be
38 filed by the tax commissioner, and retained in his office
39 until the tax, additions to tax, penalties and interest be
40 paid on the transfers therein mentioned, or until it shall
41 be ascertained that they are not subject to tax, and shall
42 then be destroyed; and at all times such report shall
43 be confidential and privileged, and its contents shall not
44 be inspected or made known by anyone, except by the
45 tax commissioner as to any report made by a clerk, when
46 there shall be a question whether such clerk has com-
47 plied with the provisions of this article.

§11-11-14a. Transfer of bonds or stocks standing in the name of decedent; reports by corporations.

1 No corporation incorporated under the law of this
2 state, and no registration or transfer agent thereof,
3 shall register or transfer any bonds or stock of the cor-
4 poration standing in the name of a decedent or joint
5 names of a decedent and one or more persons or in
6 trust for a decedent until ten days' notice to the tax
7 commissioner of the time of the transfer and until the
8 tax commissioner shall consent thereto in writing. A
9 corporation or agent registering bonds or making a trans-
10 fer without the consent of the tax commissioner under
11 this section shall be liable for any tax thereafter as-
12 sessed on account of the transfer of such securities to-
13 gether with accrued additions to tax, penalties and in-
14 terest as provided for in article ten of this chapter,
15 plus an additional penalty of one thousand dollars. This
16 liability may be enforced in the manner provided in
17 section eleven, article ten of this chapter.

18 If a corporation not incorporated in this state and
19 owning property in the state, or the registration or
20 transfer agent thereof, shall register or transfer on its
21 books, bonds or stock of the corporation standing in the
22 name of a resident decedent before taxes accruing under
23 this article with respect to the transfer of such bonds
24 or stock on the death of the decedent have been paid,
25 such corporation or agent shall become liable for the
26 payment of such taxes, additions to tax, penalties and
27 interest. Property held by such a corporation or agent
28 in this state shall be subject to execution to satisfy any
29 liability of the corporation or agent under this section.
30 A receipt or certificate of authority signed by the tax
31 commissioner shall be full protection to either a domestic
32 or foreign corporation or agent thereof in the transfer
33 of any such bonds or stock.

34 The tax commissioner shall have authority to require
35 that any reports necessary to a proper enforcement of
36 this article be made by any corporation subject to the
37 provisions of this section.

**§11-11-14b. Annuity and investment contracts; payments to
beneficiaries; notices to tax commissioner; pen-
alties.**

1 Every corporation, partnership, association, individual,
2 order or society authorized to transact annuity contracts,
3 investment contracts, or similar types or forms of policy
4 or contract business within this state which shall pay
5 to any named beneficiary, estate or trustee upon the
6 death of a resident of this state, the proceeds of any
7 such contract or policy shall, on the date of such payment,
8 give notice thereof, in writing, to the tax commissioner
9 of West Virginia, stating (a) the amount of such pay-
10 ment, (b) the name and address of each beneficiary,
11 and (c) the time and manner of payment: *Provided*,
12 That such notice shall not be required (1) when the
13 policy or contract involved or the payment to be made
14 is fifteen hundred dollars or less and is payable to the
15 class designated in section two (a) of this article, and
16 (2) when the amount of the policy or payment to be
17 made is one thousand dollars or less.

18 Any such company so authorized to do business in
19 this state, failing or refusing to comply with the pro-
20 visions of this section, shall thereby become liable to
21 the state for any amount of tax, additions to tax, penalties
22 and interest which may be due on the amount of pay-
23 ment concerning which such company failed or refused
24 to file the notice prescribed by this section.

§11-11-15. Assessment by tax commissioner.

1 The tax commissioner shall, as soon as may be, from
2 the statements and reports made by the clerk and the
3 personal representative or trustees or other person as
4 aforesaid, from the inventory of the estate, if there be
5 one, and from such other information as he may be able
6 to procure, ascertain whether any transfer of any prop-
7 erty be subject to a tax under the provisions of this
8 article, and if it be subject to tax, shall ascertain and
9 assess the amount of the tax to which it is subject. If
10 in his opinion the transfer of any of the property so
11 transferred is taxable under the provisions of this ar-
12 ticle, he shall make his assessment to that effect.

13 Notwithstanding the provisions of article ten of this
14 chapter, the notice of assessment shall set out: (a) The
15 amount of such property liable to such tax; (b) the rate
16 of tax thereon; (c) the names of the beneficiaries thereof;
17 (d) their degree of relationship to the decedent; and
18 (e) the amount of tax; and it shall be the duty of the
19 county clerk and personal representative of every such
20 estate, and if there be no personal representative the
21 beneficiaries thereof, to show in their report to the tax
22 commissioner the information upon which to base such
23 assessment. The tax commissioner shall make duplicate
24 notices of his assessment, one of which he shall forward
25 to such personal representative, trustee, grantee, vendee
26 or bargainee. If the tax is not paid within sixty days
27 after service of the notice of assessment, the tax com-
28 missioner may forward the other notice of assessment
29 to the clerk of the county commission of the county
30 wherein the property, or the greater part thereof in
31 value is located, which notice of assessment shall be re-

32 corded by the clerk in the trust deed book in his office
33 and the notice shall be indexed in the judgment lien
34 docket.

§11-11-16. Transfers not reported to commissioner.

1 If any transfer be not reported to the tax commissioner
2 by the clerk of the county commission or the executor,
3 administrator, trustee, grantee, vendee, bargainee or
4 donee, or other person, the tax commissioner may proceed,
5 upon such information as he can obtain, to inquire and
6 determine whether any such transfer is subject to tax
7 under this article, and what tax, additions to tax, penal-
8 ties and interest, if any, should be assessed, and shall
9 proceed as to any such transfer and the property passing
10 thereby, in all respects, as if the same had been reported
11 to him as required by this article.

§11-11-18. Amended assessment; recordation.

1 Notwithstanding the provisions of article ten of this
2 chapter or that any such notice of assessment may have
3 been made and recorded, if it afterward appear to the
4 tax commissioner that the transfer of the property men-
5 tioned in such notice of assessment, or any part thereof,
6 is subject to any tax in addition to that mentioned in
7 such notice of assessment, or that it is taxable in a case
8 where such notice of assessment showed that it was not
9 liable to such tax, he shall assess the proper tax thereon
10 in addition to any tax which may have been theretofore
11 assessed, and shall forthwith prepare a notice of amended
12 assessment in duplicate, and forward one of such notices
13 to each of the persons to whom his original notice of
14 assessment was required to be forwarded. The notice of
15 amended assessment, so forwarded to the clerk of the
16 county commission, shall by him be forthwith recorded
17 in the same book in which trust deeds and mortgages are
18 recorded and he shall index the notice in the judgment
19 or tax lien docket, and from the time of its admission to
20 the record, shall constitute a lien on the property on
21 which tax is assessed, for the amount of such taxes, addi-
22 tions to tax, penalties and any interest accruing thereon,
23 until the same are paid, except as against purchasers

24 for value, before such admission to record, and without
25 notice of such additional liability, and except as against
26 those who may claim under such purchaser, having pur-
27 chased for valuable consideration without notice of such
28 liability.

§11-11-20. Settlement by tax commissioner of dispute as to relationship between decedent and transferee.

1 The tax commissioner may compromise and settle the
2 amounts of any such tax when there is a controversy
3 as to the relationship between the former owner of the
4 property and the person to whom it is transferred.

§11-11-25. Liability of fiduciaries and sureties.

1 Every fiduciary, and the sureties on his official bond,
2 shall be liable to the state for any taxes, additions to
3 tax, penalties and interest payable to the state on the
4 estate of his decedent, to the amount of the moneys and
5 the value of the property which come into his hands as
6 such fiduciary, and for the proceeds of all sales of real
7 estate received by him under the provisions hereof; and
8 if any such fiduciary fail to perform any of the duties
9 imposed on him by this article, he and his sureties shall
10 be liable upon his bond for any damages resulting from
11 such failure, the county commission under whose order
12 he qualified may revoke his authority, and he and his
13 sureties shall be liable to the same proceedings as if his
14 authority had been revoked for any other cause.

§11-11-27. Inspection of books by tax commissioner; crime.

1 In addition to the tax commissioner's powers set forth
2 in section five, article ten of this chapter, every person
3 having in his possession or control any book or paper
4 containing any information respecting property trans-
5 ferred, as aforesaid, shall, at the request of the tax com-
6 missioner, exhibit the same to him or to the prosecuting
7 attorney of the county, and any person in interest shall
8 make written answer under oath to any questions which
9 the tax commissioner may put in writing concerning
10 such property. Any person failing to comply with the
11 provisions of this section shall be guilty of a misde-

12 meanor, and, upon conviction thereof, be fined not less
13 than ten nor more than five hundred dollars.

§11-11-29. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article eleven with like effect as if said act were appli-
5 cable only to the tax imposed by this article eleven and
6 were set forth in extenso in this article eleven: *Provided*,
7 That where it is expressly and specifically provided in
8 this article eleven that a particular provision of this
9 article eleven shall govern and control notwithstanding
10 any provision contained in said article ten, such particular
11 provision of this article eleven shall govern and control.

**ARTICLE 11A. INTERSTATE COMPROMISE OF INHERITANCE
AND DEATH TAXES.**

§11-11A-1. Procedure and authority.

1 When the state tax commissioner claims that a decedent
2 was domiciled in this state at the time of his death and
3 the taxing authorities of another state or states make a
4 like claim on behalf of their state or states, the state tax
5 commissioner may make a written agreement of com-
6 promise with the other taxing authorities and the execu-
7 tor or administrator that a certain sum shall be accepted
8 in full satisfaction of any and all inheritance taxes im-
9 posed by this state, including any additions to tax, interest
10 or penalties to the date of filing the agreement. The
11 agreement shall also fix the amount to be accepted by
12 the other states in full satisfaction of death taxes. The
13 executor or administrator is hereby authorized to make
14 such agreement. Either the state tax commissioner or
15 the executor or administrator shall file the agreement, or
16 a duplicate, with the authority that would be empowered
17 to assess inheritance taxes for this state if there had
18 been no agreement; and thereupon the tax shall be
19 deemed conclusively fixed as therein provided. Unless
20 the tax is paid within thirty days after filing the agree-
21 ment, additions to tax, interest and penalties shall there-
22 after accrue upon the amount fixed in the agreement but

23 the time between the decedent's death and the filing shall
 24 not be included in computing the same.

**ARTICLE 11B. INTERSTATE ARBITRATION OF INHERITANCE AND
 DEATH TAXES.**

§11-11B-7. Additions to tax, penalties and interest.

1 In any case where it is determined by the board that
 2 the decedent died domiciled in this state, additions to tax,
 3 interest and penalties, if otherwise imposed by law, for
 4 nonpayment of inheritance taxes between the date of
 5 the agreement and of filing of the determination of the
 6 board as to domicile, shall not exceed eight percent per
 7 annum.

**ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE
 TAX.**

- §11-12-5. Time for which registration certificate granted; power of tax commissioner to cancel certificate.
- §11-12-7. Display of registration certificate; injunction; public information.
- §11-12-9. Penalties.
- §11-12-10. Collection of back taxes; notice of discontinuance of business.
- §11-12-14. Hearing; appeal.
- §11-12-15. Enforcement.
- §11-12-18. General procedure and administration.

**§11-12-5. Time for which registration certificate granted;
 power of tax commissioner to cancel certificate.**

1 All annual certificates issued under the provisions of
 2 section four of this article shall be for a period of one
 3 year beginning the first day of July and ending the
 4 thirtieth day of the following June.

5 If a registrant shall at any time knowingly or will-
 6 fully file false data or information required by section
 7 four of this article, or shall willfully refuse or neglect
 8 to file any tax report or to pay the tax, additions to tax,
 9 penalties, or interest, or any part thereof, required by
 10 chapter eleven of the code of West Virginia, one thou-
 11 sand nine hundred thirty-one, as amended, the tax com-
 12 missioner may cancel his certificate. Before canceling
 13 any such certificate, the tax commissioner shall set a

14 hearing as prescribed in this article and notify the per-
15 son by certified mail not less than twenty days prior
16 to the hearing date to appear and show cause why such
17 registration certificate should not be canceled.

§11-12-7. Display of registration certificate; injunction; public information.

1 Any person to whom a certificate of registration shall
2 be issued under the provisions of section four of this
3 article shall keep such certificate posted in a conspicuous
4 position in the place where the privilege of such business
5 is exercised. Such certificate of registration shall be
6 produced for inspection whenever required by the tax
7 commissioner or by any law-enforcement officers of this
8 state, county or municipality wherein the privileges to
9 conduct business are exercised.

10 No injunction shall issue from any court in the state
11 enjoining the collection of any business registration
12 certificate tax required herein; and any person claiming
13 that any business certificate is not due, for any reason,
14 shall pay the same under protest and petition the tax com-
15 missioner for a refund in accordance with the provisions
16 of section fourteen, article ten of this chapter.

17 If any person engaging in or prosecuting any business,
18 or trade, contrary to any other provisions of this article,
19 whether without obtaining a business certificate there-
20 for before commencing the same, or by continuing the
21 same after the termination of the effective period of any
22 such business certificate, the circuit court or the judge
23 thereof in vacation, of the county in which such violation
24 occurred, shall, upon proper application in the name of
25 the state, and after ten days' written notice thereof to
26 such person, grant an injunction prohibiting such per-
27 son from continuing such business, activity or trade
28 until he has fully complied with the provisions of this
29 article. The remedy provided in this section shall be
30 in addition to all other penalties and remedies pro-
31 vided by law.

32 The tax commisioner shall make available, when

33 requested, information as to whether a person is reg-
34 istered to do business in the state of West Virginia.

§11-12-9. Penalties.

1 In addition to the provisions of article ten of this
2 chapter, any person engaging in or prosecuting any
3 business contrary to the provisions of this article, whether
4 without obtaining a business registration certificate
5 therefor before commencing the same, or by continuing
6 the same after the termination of the effective period
7 of any such certificate may, in addition to paying the
8 business registration tax, additions to tax, penalties and
9 interest, be liable for a penalty of fifty dollars for each
10 month or fraction thereof during which he has been in
11 default of the business registration tax. It shall be the
12 duty of the tax commissioner to collect the full amount
13 of the business registration tax, additions to tax, interest,
14 and all penalties imposed.

**§11-12-10. Collection of back taxes; notice of discontinuance of
business.**

1 Any person engaging in or prosecuting any business
2 contrary to provisions of this article, whether without
3 obtaining a certificate therefor before commencing the
4 same, or by continuing the same after the termination
5 of the effective period of such certificate, shall, in addi-
6 tion to all other penalties provided by law, be liable for
7 the payment of all back business franchise registration
8 taxes and the additions to tax, penalties and interest due
9 thereon and the penalties imposed by this article for a
10 period not exceeding three years.

11 Whenever any person ceases to engage in business
12 within this state by reason of the discontinuance, sale
13 or transfer or by any other means of disposition of the
14 business, it shall be his duty to notify the tax commis-
15 sioner in writing of the discontinuance, sale or transfer
16 or other disposition of the business, the date thereof
17 and the name and address of the seller or transferor
18 and purchaser or transferee thereof.

19 Unless the notice shall have been given to the tax

20 commissioner as above provided, such seller or trans-
21 feror and purchaser or transferee shall be jointly liable
22 to the state of West Virginia for the amount of all taxes,
23 additions to tax, penalties and interest due and unpaid
24 under the provisions of this article or article ten of this
25 chapter.

§11-12-14. Hearing; appeal.

1 Any person adversely affected by an order or decision
2 of the tax commissioner, or his representative, relating
3 to the granting or the canceling of the certificate, may
4 appeal from such determination by requesting a hearing
5 before the tax commissioner, or his examiner, if
6 such request is made within sixty days from receipt
7 of such order or decision. The hearing shall be held
8 as provided in section nine, article ten of this chapter
9 and the taxpayer may take an appeal as provided in
10 section ten of said article ten.

§11-12-15. Enforcement.

1 Any employee of the state tax department so desig-
2 nated by the tax commissioner shall have all the lawful
3 powers delegated to members of the department of
4 public safety to enforce the provisions of this article in
5 any county or municipality of this state, and such em-
6 ployee shall, before entering upon the discharge of his
7 duties, execute a bond with security in the sum of thirty-
8 five hundred dollars, payable to the state of West Vir-
9 ginia, conditioned for the faithful performance of his
10 duties as such, and such bond shall be approved as to
11 form by the attorney general, and the same shall be
12 filed with the secretary of state and preserved in his
13 office.

§11-12-18. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the business franchise
4 registration tax imposed by this article twelve, sections
5 one through seventeen, with like effect as if said act
6 were applicable only to such business franchise regis-

7 tration tax imposed by this article twelve and were set
8 forth with respect thereto in extenso in this article
9 twelve.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-6a. Report of change in federal taxable income.

§11-12A-23. General procedure and administration.

§11-12A-6a. Report of change in federal taxable income.

1 If the amount of a taxpayer's federal taxable income
2 reported on his federal income tax return for any taxable
3 year is changed or corrected by the United States internal
4 revenue service or other competent authority, or as the
5 result of a renegotiation of a contract or subcontract with
6 the United States, the taxpayer shall report such changes
7 or correction in federal taxable income within ninety days
8 after the final determination of such change, correction,
9 or renegotiation, or as otherwise required by the tax com-
10 missioner, and shall concede the accuracy of such de-
11 termination or state wherein it is erroneous. Any taxpayer
12 filing an amended federal income tax return shall also
13 file within ninety days thereafter an amended return
14 under this article, and shall give such information as the
15 tax commissioner may require. The tax commissioner
16 may by regulation prescribe such exceptions to the re-
17 quirements of this section as he deems appropriate.

§11-12A-23. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article twelve-a with like effect as if said act were
5 applicable only to the tax imposed by this article twelve-a
6 and were set forth in extenso in this article twelve-a.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-9. Tax year.

§11-13-13. Receivership or insolvency proceedings.

§11-13-18. Agents for collection of delinquent taxes.

§11-13-27. General procedure and administration.

§11-13-9. Tax year.

1 The assessment of taxes made under the provisions

2 of article ten of this chapter and the returns required
3 therefor shall be for the year ending on the thirty-first
4 day of December. If the taxpayer, in exercising a privi-
5 lege taxable under this article, keeps the books reflecting
6 the same on a basis other than the calendar year, he may,
7 with the assent of the tax commissioner, make his annual
8 returns and pay taxes for the year covering his accounting
9 period, as shown by the method of keeping his books.

§11-13-13. Receivership or insolvency proceedings.

1 In the event a business subject to the tax imposed by
2 this article shall be operated in connection with a re-
3 ceivership or insolvency proceeding, the court under
4 whose direction such business is operated shall, by the
5 entry of a proper order in the cause, make provision for
6 the regular payment of such taxes as the same become
7 due.

§11-13-18. Agents for collection of delinquent taxes.

1 The tax commissioner may, with the approval of the
2 governor, appoint not more than twelve agents for the
3 entire state for the collection of delinquent taxes, de-
4 linquent license taxes and all additions to tax, penalties
5 and interest. All delinquent taxes, delinquent license
6 taxes and all additions to tax, penalties and interest so
7 collected shall be, by the tax commissioner, paid into
8 the state treasury to the credit of the state general fund.
9 The salary of every such agent appointed shall be de-
10 termined by the state tax commissioner by and with the
11 approval of the governor.

§11-13-27. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article thirteen with like effect as if said act were appli-
5 cable only to the tax imposed by this article thirteen and
6 were set forth in extenso in this article thirteen.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-7. Due date of reports; reports required; records to be kept; examina-
tion of records; subpoena powers; examination of witnesses.

- §11-14-10. Refund of taxes illegally collected, etc., refund for gallonage exported or lost; change of rate; claim for refund.
- §11-14-11. Refund of tax because of certain nonhighway uses.
- §11-14-11a. Refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services.
- §11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.
- §11-14-19. Penalty for failure to file required return when no tax due.
- §11-14-25. Receivership or insolvency proceeding.
- §11-14-36. General procedure and administration.

§11-14-7. Due date of reports; reports required; records to be kept; examination of records; subpoena powers; examination of witnesses.

1 Every taxpayer subject to the tax imposed by this
2 article shall make, on or before the last day of each month,
3 to the commissioner a report of its operations during
4 the preceding month as the commissioner may require
5 and such other reports from time to time as the com-
6 missioner may deem necessary. The reports prescribed
7 herein are required although a tax might not be due, or
8 no business transacted, for the period covered by the
9 report. For good cause shown, the commissioner may
10 extend the time for filing said reports for a period not
11 exceeding thirty days.

12 The reports and taxes due, as imposed by this article,
13 shall be deemed as having been timely filed for the pur-
14 pose of avoiding interest, additions to tax and penalties
15 only if the postmark date thereon is clearly within the
16 said last day of the calendar month, or is received within
17 such period. If the last day falls on a Saturday or Sunday,
18 or a day which is a legal holiday in the state of West Vir-
19 ginia, filing will be considered timely if it is done on the
20 next succeeding day which is not a Saturday, Sunday or
21 legal holiday.

22 A taxpayer shall keep such records necessary to verify
23 the reports and returns required by this article, includ-
24 ing inventories, receipts, disbursements, and any other
25 records which the commissioner by regulation may pre-
26 scribe, for a period of time not less than three years.

27 Unless otherwise permitted, in writing, by the com-
28 missioner, each delivery ticket or invoice for each pur-

29 chase or sale of gasoline or special fuel shall be recorded
30 upon a serially numbered invoice showing the name and
31 address of the seller and the purchaser, point of delivery,
32 the date, number of gallons, kind of fuel and price of said
33 fuel. The amount of tax shall be indicated separately or
34 the invoice shall indicate whether or not the tax im-
35 posed by this article is included in the total price and such
36 other information as the commissioner may require: *Pro-*
37 *vided*, That these invoicing requirements shall not apply
38 to cash sales, and a person making such sales shall main-
39 tain such records as may be necessary to verify his return.

40 In addition to the tax commissioner's powers set forth
41 in section five, article ten of this chapter, the commis-
42 sioner may inspect or examine the records, books, papers,
43 storage tanks, meters and any equipment records of a
44 taxpayer or any other person to verify the truth and
45 accuracy of any report or return to ascertain whether the
46 tax imposed by this article has been properly paid.

47 In addition to the tax commissioner's powers set forth
48 in section five, article ten of this chapter, as a further
49 means of obtaining the records, books and papers of a
50 taxpayer or any other person and ascertaining the amount
51 of taxes and the reports due under this article, the com-
52 missioner shall have the power to examine witnesses
53 under oath; and if any witness shall fail or refuse at the
54 request of the commissioner to grant access to the books,
55 records and papers, the commissioner shall certify the
56 facts and the names to the circuit court of the county
57 having jurisdiction of the party and such court shall
58 thereupon issue a subpoena duces tecum to such party to
59 appear before the commissioner, at a place designated
60 within the jurisdiction of such court, on a day fixed.

***§11-14-10. Refund of taxes illegally collected, etc.; refund
for gallonage exported or lost; change of rate;
claim for refund.**

1 The commissioner is hereby authorized to refund from

* Clerk's Note—According to the Senate Journal of March 11, 1978, subsequent to the enactment of this section, §11-14-10, Com. Sub. for S. B. 149 (Chapter 101) was also enacted, amending section 10.

2 the funds collected under the provisions of this article
3 any tax, interest, additions to tax or penalties which
4 have been erroneously or illegally collected from any
5 person.

6 If any distributor or producer, retail dealer or im-
7 porter, while he shall be the owner thereof, loses any
8 gallons of gasoline or special fuel through fire, lightning,
9 breakage, flood or other casualty, which gallons have
10 been previously included in the tax by or for such per-
11 son, he shall be refunded a sum equal to the amount
12 of the tax paid upon such gallons so lost.

13 Any distributor or producer, retail dealer or importer
14 or other person who purchases or receives gasoline or
15 special fuel in this state upon which the tax imposed
16 by this article has been paid and who subsequently
17 exports the same from this state (except in a supply
18 tank), shall be entitled to a refund for the amount of
19 tax paid.

20 Every distributor or producer, retail dealer or im-
21 porter shall be entitled to a refund from this state of the
22 amount resulting from a change of rate decreasing the
23 tax under the provisions of this article on gasoline and
24 special fuel on hand and in inventory on the effective
25 date of such rate change, which gasoline and special fuel
26 shall have been included in any previous computations
27 by which the tax imposed by this article has been paid
28 by him.

29 No refund shall be made under this section unless a
30 written claim for refund is filed setting forth the cir-
31 cumstances upon which such refund is claimed. A claim
32 for refund shall be subject to the provisions of section
33 fourteen, article ten of this chapter. It shall be in such
34 form and supported with such records as the commis-
35 sioner may prescribe and shall be made under the pen-
36 alty of perjury. Claims for refund shall be filed with
37 the commissioner within three years from the end of
38 the month in which the tax was erroneously or illegally
39 paid or the gallons were exported or lost by casualty or
40 from change of rate, as provided in this section. Such

41 claim for refund shall also be subject to the provisions
42 of section fourteen, article ten of this chapter.

§11-14-11. Refund of tax because of certain nonhighway uses.

1 The tax imposed by this article shall be refunded to
2 any person who shall buy in quantities of twenty-five
3 gallons or more, at any one time, tax-paid gasoline or
4 special fuel, when consumed for the following purposes:

5 (1) As a special fuel for internal combustion engines
6 not operated upon highways of this state, or

7 (2) Gasoline consumed to operate tractors and gas
8 engines or threshing machines for agricultural purposes,
9 when such operation is not, in whole or in part, upon
10 the highways of this state, or

11 (3) Gasoline used by any railway company, subject
12 to regulation by the public service commission of West
13 Virginia, for any purpose other than upon the highways
14 of this state, or

15 (4) Gasoline consumed in the business of manufac-
16 turing or producing natural resources or in mining or
17 drilling therefor, or in the transportation of natural re-
18 sources solely by means of unlicensed vehicles or ve-
19 hicles licensed under the motor vehicle laws of this
20 state, either as a motor fuel or for any other purpose and
21 which gasoline is not in any part used upon the highways
22 of this state, or

23 (5) Gasoline consumed in motorboats or other water-
24 craft operated upon the navigable waters of this state.

25 Such tax shall be refunded upon presentation to the
26 commissioner of an affidavit accompanied by the original
27 or top copy sales slips or invoices, or certified copies
28 thereof, from the distributor or producer or retail dealer,
29 showing such purchases, together with evidence of pay-
30 ment thereof, which affidavit shall set forth the total
31 amount of such gasoline or special fuel purchased and
32 consumed by such user, other than upon any highways
33 of this state, and how used; and the commissioner upon
34 the receipt of such affidavit and such paid sales slips

35 or invoices shall cause to be refunded such tax paid
36 on gasoline or special fuel purchased and consumed as
37 aforesaid.

38 The right to receive any refund under the provisions
39 of this section shall not be assignable and any assignment
40 thereof shall be void and of no effect, nor shall any pay-
41 ment be made to any person other than the original
42 person entitled thereto using gasoline or special fuel
43 as hereinbefore in this section set forth. The commis-
44 sioner shall cause a refund to be made under the au-
45 thority of this section only when the claim for such
46 refund is filed with the commissioner, upon forms pre-
47 scribed by the commissioner, within four months from
48 the month of purchase or delivery of the gasoline or
49 special fuel except that any application for refund made
50 under authority of subdivision (2) above shall be filed
51 within twelve months from the month of purchase or
52 delivery of such gasoline or special fuel. Any claim for
53 a refund not timely filed shall not be construed to be or
54 constitute a moral obligation of the state of West Vir-
55 ginia for payment. Such claim for refund shall also be
56 subject to the provisions of section fourteen, article ten
57 of this chapter.

**§11-14-11a. Refund of tax used by volunteer fire departments,
nonprofit ambulance services and emergency
rescue services.**

1 Upon certification by the county commission to the
2 state tax commissioner that an organization in the county
3 is a bona fide volunteer fire department, nonprofit ambu-
4 lance service or emergency rescue service, the tax im-
5 posed by this article and paid by such organization shall
6 be refunded.

7 Such tax shall be refunded upon presentation to the
8 commissioner of an affidavit accompanied by the original
9 or top copy sales slips or invoices, or certified copies
10 thereof, from the distributor or producer or retail dealer,
11 showing such purchases, together with evidence of pay-
12 ment thereof, which affidavit shall set forth the total
13 amount of such gasoline or special fuel purchased and

14 consumed by such user, and the commissioner upon the
15 receipt of such affidavit and such paid sales slips or
16 invoices shall cause to be refunded such tax paid on
17 gasoline or special fuel purchased and consumed as
18 aforesaid.

19 The right to receive any refund under the provisions
20 of this section shall not be assignable and any assignment
21 thereof shall be void and of no effect, nor shall any pay-
22 ment be made to any person other than the original
23 person entitled thereto using gasoline or special fuel as
24 hereinbefore in this section set forth. The commissioner
25 shall cause a refund to be made under the authority of
26 this section only when the application for such refund is
27 filed with the commissioner, upon forms prescribed by
28 the commissioner, no later than the thirty-first day of
29 August for purchases of fuel made during the preceding
30 fiscal year ending the thirtieth day of June. Any claim
31 for a refund not timely filed shall not be construed to be
32 or constitute a moral obligation of the state of West
33 Virginia for payment. Such claim for refund shall also
34 be subject to the provisions of section fourteen, article
35 ten of this chapter.

***§11-14-12. Partial refund of tax on tax-paid gallonage con-
sumed in buses.**

1 Any person regularly operating any vehicle under a
2 certificate of public convenience and necessity or under
3 a contract carrier permit for transportation of persons,
4 when such person purchases tax-paid gasoline or tax-
5 paid special fuel, as required by this article, in an amount
6 of twenty-five gallons or more, and complies with all the
7 requirements of section eleven, with the exception of
8 off-highway use, may be refunded an amount equal to
9 four and one-half cents per gallon under authority of
10 this section: *Provided*, That said gallons of gasoline or
11 special fuel shall have been consumed in the operation
12 of urban and suburban bus lines, and the majority of

* Clerk's Note—According to the Senate Journal of March 11, 1978, subsequent to the enactment of this section, §11-14-12, Com. Sub. for S. B. 143 (Chapter 100) was also enacted, amending section 12.

13 passengers use the bus for traveling a distance not ex-
14 ceeding forty miles, measured one way, on the same day
15 between their places of abode and their places of work,
16 shopping areas or schools. There shall be presented to
17 the commissioner a claim for refund accompanied by
18 proof of such purchase and payment as required by
19 section eleven of this article. The right to a refund under
20 this section shall not be assignable, and any assignment
21 so made shall be void. Such claim for refund shall also
22 be subject to the provisions of section fourteen, article
23 ten of this chapter.

§11-14-19. Penalty for failure to file required return when no tax due.

1 In the case of any failure to make or file a return when
2 no tax is due, as required by this article, on the date
3 prescribed therefor, unless it be shown that such failure
4 is due to reasonable cause and not due to willful neglect,
5 there shall be collected a penalty of twenty-five dollars
6 for each month of such failure or fraction thereof.

§11-14-25. Receivership or insolvency proceeding.

1 In the event that a business of a person subject to
2 the tax imposed by this article shall be operated in
3 connection with a receivership or insolvency proceeding,
4 the court under whose direction such business is oper-
5 ated or was caused to be operated shall, by entry of a
6 proper order in the cause, make provisions for the reg-
7 ular payment of such taxes as the same become due.

§11-14-30. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the gasoline and spe-
4 cial fuel excise tax imposed by this article fourteen with
5 like effect as if said act were applicable only to such
6 gasoline and special fuel excise tax imposed by this
7 article fourteen and were set forth with respect thereto
8 in extenso in this article fourteen.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

- §11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.
- §11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds.
- §11-14A-16. Penalty for failure to file required return when no tax due.
- §11-14A-27. General procedure and administration.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

1 Every taxpayer subject to the tax imposed by this
2 article shall on or before the last day of January, April,
3 July and October of every calendar year make to the
4 commissioner such reports of its operations during the
5 quarter ending the last day of the preceding month as
6 the commissioner may require and such other reports
7 from time to time as the commissioner may deem neces-
8 sary. For good cause shown, the commissioner may
9 extend the time for filing said reports for a period not
10 exceeding thirty days.

11 Two or more taxpayers regularly engaged in the trans-
12 portation of passengers on through buses on through
13 tickets in pool operation may, at their option and upon
14 proper notice to the commissioner, make joint reports
15 of their entire operations in this state. The taxes im-
16 posed shall be calculated on the basis of such joint re-
17 ports as though such taxpayers were a single taxpayer;
18 and the taxpayers making such reports shall be jointly
19 and severally liable for the taxes. Such joint reports
20 shall show the total number of highway miles traveled
21 in this state and the total number of gallons of gasoline
22 or special fuel purchased in this state by the reporting
23 taxpayers. Credits to which the taxpayers making a
24 joint return are entitled shall not be allowed as credits
25 to any other taxpayer; but taxpayers filing joint reports
26 shall permit all taxpayers engaged in this state in pool
27 operations with them to join in filing joint reports.

28 A taxpayer shall keep such records necessary to verify
29 the highway miles traveled within and without the
30 state of West Virginia, the number of gallons of gasoline
31 and special fuel used and purchased within and without

32 West Virginia and any other records the commissioner
33 by regulation may prescribe.

34 In addition to the tax commissioner's powers set forth
35 in section five, article ten of this chapter, the commis-
36 sioner may inspect or examine the records, books, papers,
37 storage tanks, meters and any equipment records or
38 records of highway miles traveled within and without
39 West Virginia and the records of any other person to
40 verify the truth and accuracy of any statement or report
41 to ascertain whether the tax imposed by this article has
42 been properly paid.

43 In addition to the tax commissioner's powers set forth
44 in section five, article ten of this chapter, and as a further
45 means of obtaining the records, books and papers of a
46 taxpayer or any other person and ascertaining the amount
47 of taxes and reports due under this article, the commis-
48 sioner shall have the power to examine witnesses under
49 oath; and if any witness shall fail or refuse at the request
50 of the commissioner to grant access to the books, records
51 and papers, the commissioner shall certify the facts and
52 names to the circuit court of the county having jurisdic-
53 tion of the party and such court shall thereupon issue a
54 subpoena duces tecum to such party to appear before the
55 commissioner, at a place designated within the jurisdic-
56 tion of such court, on a day fixed.

**§11-14A-11. Refunds authorized; claim for refund and proce-
dure thereon; surety bonds.**

1 The commissioner is hereby authorized to refund from
2 the funds collected under the provisions of this article
3 and article fourteen of this chapter, the amount of the
4 credit accrued for gallons of gasoline or special fuel
5 purchased in this state but consumed outside of this state,
6 if the taxpayer by duly filed claim requests the com-
7 missioner to issue a refund and if the commissioner is
8 satisfied that said taxpayer is entitled to said refund and
9 that said taxpayer has not applied for a refund of the
10 tax imposed by article fourteen of this chapter: *Provided,*
11 That the commissioner shall not approve a claim for
12 refund when such claim for such refund is filed after

13 thirteen months from the close of the quarter in which
14 the tax was paid or the credit, as provided for in section
15 nine of this article, was allowed: *Provided, however,*
16 That such refund shall not be made until after audit of
17 the claimant's records by the commissioner or until
18 after a surety bond has been furnished by the claimant,
19 as hereinafter provided, in an amount fixed by the com-
20 missioner, conditioned to pay all road taxes due here-
21 under: *Provided further,* That said credit or refund shall
22 in no case be allowed to reduce the amount of tax to be
23 paid by a taxpayer below the amount due as tax on
24 gasoline or special fuel used as fuel in this state as
25 provided by article fourteen of this chapter. The right
26 to receive any refund under the provisions of this article
27 shall not be assignable and any attempt at assignment
28 thereof shall be void and of no effect. Such claim for
29 refund or credit shall also be subject to the provisions of
30 section fourteen, article ten of this chapter.

31 A taxpayer may furnish a continuous surety bond in
32 an amount fixed by the commissioner, but such amount
33 shall not be less than the total refunds due or to be paid
34 within one year. Upon completion of the filing of such
35 surety bond an annual notice of renewal, only, shall be
36 required thereafter.

37 The surety must be authorized to engage in business
38 within this state. The bond shall be conditioned upon
39 faithful compliance with the provisions of this article,
40 including the filing of the returns and payment of all tax
41 prescribed by this article. Such bond shall be approved
42 by the commissioner as to sufficiency and by the at-
43 torney general as to form, and shall indemnify the state
44 against any loss arising from the failure of the taxpayer
45 to pay for any cause whatever the motor carrier road
46 tax imposed by this article.

47 So long as the bond remains in force, the commissioner
48 may order refunds to the taxpayer in the amounts ap-
49 pearing to be due on claims duly filed by the taxpayer
50 under the provisions of this article without first auditing
51 the records of the carrier.

52 Any surety on a bond furnished hereunder shall be
53 relieved, released and discharged from all liability ac-
54 cruing on such bond after the expiration of sixty days
55 from the date the surety shall have lodged, by certified
56 mail, with the commissioner a written request to be
57 discharged. This shall not relieve, release or discharge
58 the surety from liability already accrued, or which shall
59 accrue before the expiration of the sixty-day period.
60 Whenever any surety shall seek discharge as herein pro-
61 vided, it shall be the duty of the principal of such bond
62 to supply the commissioner with another bond, or pledge
63 of property equal in value to the original bond, such
64 pledge to be in the form of a tax lien on the property
65 pledged and said lien shall be duly perfected in the
66 office of the clerk of the county commission of the county
67 wherein such property is situated and shall be submitted
68 to the commissioner along with a certified appraisal state-
69 ment as to the value of the property pledged prior to the
70 expiration of the original bond. Failure to provide such
71 bond or pledge may result in the commissioner canceling
72 any registration card and identification marker previ-
73 ously issued to said person.

**§11-14A-16. Penalty for failure to file required return when
no tax due.**

1 In the case of any failure to make or file a return when
2 no tax is due, as required by this article, on the date pre-
3 scribed therefor, unless it can be shown that such failure is
4 due to reasonable cause and not due to willful neglect,
5 there shall be collected a penalty of twenty-five dollars for
6 each month of such failure or fraction thereof.

§11-14A-27. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article ten
3 of this chapter shall apply to the motor carrier road tax
4 imposed by this article fourteen-a with like effect as if
5 said act were applicable only to such motor carrier road
6 tax imposed by this article fourteen-a and were set forth
7 with respect thereto in extenso in this article fourteen-a.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-4b. Liability of purchaser; assessment and collection.

§11-15-16. Tax return and payment.

§11-15-17. Liability of officers of corporation, etc.

§11-15-23. Keeping and preserving of records.

§11-15-32. General procedure and administration.

§11-15-4b. Liability of purchaser; assessment and collection.

1 If any purchaser refuses to pay to the vendor the tax
2 imposed by section three of this article, or in the case of
3 a sale exempt from the application of the tax, a purchaser
4 refuses to sign and present to the vendor a proper certifi-
5 cate indicating the sale is not subject to this tax, or signs
6 or presents to the vendor a false certificate, or after sign-
7 ing and presenting a proper certificate uses the items
8 purchased in such manner that the sale would be subject
9 to the tax, he shall be personally liable for the amount of
10 tax applicable to the transaction or transactions.

11 In such cases the tax commissioner shall have authority
12 to make an assessment against such purchaser, based
13 upon any information within his possession or that may
14 come into his possession. This assessment and notice
15 thereof shall be made and given in accordance with sec-
16 tions seven and eight, article ten of this chapter.

17 This section shall not be construed as relieving the
18 vendor from liability for the tax.

§11-15-16. Tax return and payment.

1 The taxes levied by this article shall be due and pay-
2 able in monthly installments, on or before the fifteenth
3 day of the month next succeeding the month in which the
4 tax accrued. The taxpayer shall, on or before the fifteenth
5 day of each month, make out and mail to the tax commis-
6 sioner a return for the preceding month, in the form
7 prescribed by the tax commissioner, showing: (a) The
8 total gross proceeds of his business for that month; (b)
9 the gross proceeds of his business upon which the tax is
10 based; (c) the amount of the tax for which he is liable;
11 and (d) any further information necessary in the compu-
12 tation and collection of the tax which the tax commis-
13 sioner may require. A remittance for the amount of the

14 tax shall accompany the return. A monthly return shall
15 be signed by the taxpayer or his duly authorized agent.

§11-15-17. Liability of officers of corporation, etc.

1 If the taxpayer is an association or corporation, the
2 officers thereof shall be personally liable, jointly and
3 severally, for any default on the part of the association or
4 corporation, and payment of the tax and any additions to
5 tax, penalties and interest thereon imposed by article ten
6 of this chapter may be enforced against them as against
7 the association or corporation which they represent.

§11-15-23. Keeping and preserving of records.

1 Each taxpayer shall keep complete and accurate records
2 of taxable sales and of charges, together with a record of
3 the tax collected thereon, and shall keep all invoices, bills
4 of lading and such other pertinent documents in such
5 form as the tax commissioner may by regulation require.
6 Such records and other documents shall be preserved for
7 a period of time not less than three years, unless the tax
8 commissioner shall consent in writing to their destruction
9 within that period or by order require that they be kept
10 longer.

§11-15-32. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by
4 this article fifteen with like effect as if said act were
5 applicable only to the tax imposed by this article fifteen
6 and were set forth in extenso in this article fifteen.

ARTICLE 15A. USE TAX.

§11-15A-12. Bond to secure payment.

§11-15A-21. Books; examination.

§11-15A-22. Canceling or revoking permits.

§11-15A-28. General procedure and administration.

§11-15A-12. Bond to secure payment.

1 The tax commissioner may, when in his judgment it
2 is necessary and advisable to do so in order to secure
3 the collection of the tax levied under this article, au-

4 thorize any person subject to such tax and any retailer
5 required or authorized to collect such tax, pursuant to
6 the provisions of sections six and seven of this article,
7 to file with him a bond issued by a surety company
8 authorized to transact business in this state and ap-
9 proved by the insurance commissioner as to solvency
10 and responsibility, in such amount as the tax commis-
11 sioner may fix, to secure the payment of any tax, addi-
12 tions to tax, penalties and interest due or which may
13 become due from such person. In lieu of such bond,
14 securities approved by the tax commissioner, in such
15 amount as he may prescribe, may be deposited with him,
16 which securities shall be kept in the custody of the state
17 treasurer and may be sold by him at public or private
18 sale, after notice to the depositor thereof, if it becomes
19 necessary to do so in order to recover any tax, additions
20 to tax, penalties and interest due. Upon any such sale,
21 the surplus, if any, above the amounts due under this
22 article and article ten of this chapter, shall be returned
23 to the person who deposited the securities.

§11-15A-21. Books; examination.

1 Every retailer required or authorized to collect taxes
2 imposed by this article and every person using in this
3 state tangible personal property purchased on or after
4 the first day of July, one thousand nine hundred fifty-
5 one, shall keep such records, receipts, invoices, and other
6 pertinent papers as the tax commissioner shall require,
7 in such form as the tax commissioner shall require.

8 In addition to the tax commissioner's powers set forth
9 in section five, article ten of this chapter, the tax com-
10 missioner or any of his duly authorized agents is hereby
11 authorized to examine the books, papers, records and
12 equipment of any person either selling tangible personal
13 property or liable for the tax imposed by this article,
14 and to investigate the character of the business of any
15 such person in order to verify the accuracy of any re-
16 turn made, or if no return was made by such person,
17 to ascertain and determine the amount due under the
18 provisions of this article. Any such books, papers and

19 records shall be made available within this state for such
20 examination upon reasonable notice when the tax com-
21 missioner shall deem it advisable and shall so order.
22 However, where the taxpayer's records must be kept
23 out-of-state, the taxpayer may upon being notified by
24 the tax commissioner that an examination is to be made,
25 elect to do one of the following: (1) Forthwith transport
26 the required records to a convenient point in West Vir-
27 ginia and notify the tax commissioner that they are
28 available; or (2) pay the reasonable traveling expenses
29 of the tax commissioner's representatives from Charles-
30 ton, West Virginia, to the out-of-state place where the
31 records are kept, and return, and reasonable living ex-
32 penses of such representatives while engaged in their
33 examination.

§11-15A-22. Canceling or revoking permits.

1 Whenever any retailer maintaining a place of business
2 in this state, or authorized to collect the tax herein im-
3 posed pursuant to section seven of this article, fails to
4 comply with any of the provisions of this article or
5 any orders, rules or regulations of the tax commissioner
6 prescribed and adopted for this article under article ten
7 of this chapter, the tax commissioner may, upon notice
8 and hearing hereinafter provided, by order, cancel the
9 business franchise registration certificate, if any, issued
10 to such retailer under article twelve, chapter eleven
11 of the code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, or if such retailer is a corporation
13 authorized to do business in this state under section
14 seventy-nine, article one, chapter thirty-one of said code,
15 may certify to the secretary of state a copy of an order
16 finding that such retailer has failed to comply with
17 certain specified provisions, orders, rules or regulations.
18 The secretary of state shall, upon receipt of such certified
19 copy, revoke the permit authorizing said corporation to
20 do business in this state, and shall issue a new permit
21 only when such corporation shall have obtained from the
22 tax commissioner an order finding that such corporation
23 has complied with its obligations under this article. No
24 order authorized in this section shall be made until the

25 retailer is given an opportunity to be heard and to show
26 cause why such order should not be made, and he shall
27 be given twenty days' notice of the time, place and pur-
28 pose of such hearing. The tax commissioner shall have
29 the power in his discretion to issue a new business
30 franchise registration certificate after such canceling.

§11-15A-28. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article fifteen-a with like effect as if said act were appli-
5 cable only to the tax imposed by this article fifteen-a and
6 were set forth in extenso in this article fifteen-a.

ARTICLE 17. CIGARETTE TAX ACT.

§11-17-10. Refunds.

§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

§11-17-17. Enforcement powers.

§11-17-19. Penalty for failure to file return when no tax due; crimes.

§11-17-22. General procedure and administration.

§11-17-10. Refunds.

1 The commissioner shall redeem any unused or muti-
2 lated, but identifiable, stamps that any wholesaler or
3 retail dealer may present for redemption, on written
4 verified requests made by the purchaser, his administra-
5 tors, executors, successors or assigns, and refund there-
6 for, ninety-five percent of the face value of said stamps,
7 less any discounts allowed on the purchase of said stamps.
8 The commissioner shall pay on a like basis for stamps
9 destroyed by fire or flood upon presentation of proof of
10 such loss satisfactory to him. Such payments shall, for
11 the purposes hereof, be deemed to be refunds of taxes
12 improperly collected and shall be allowed and paid from
13 funds collected. Stamps or meter impressions on ciga-
14 rettes returned to the manufacturers will be subject to
15 refund upon the filing of an affidavit in duplicate issued
16 by the manufacturer evidencing the destruction of stamps
17 or meter impressions. A claim for refund or credit shall

18 be subject to the provisions of section fourteen, article
19 ten of this chapter.

**§11-17-12. Reports required; due date; records to be kept;
inspection of records and stocks; examination of
witnesses, summons, etc.**

1 On or before the fifteenth day of each month, common
2 carriers, wholesalers, subjobbers, retail dealers and
3 agents, or vending machine operators, shall, when re-
4 quired by this article, or the tax commissioner, file a
5 report covering the business transacted in the previous
6 month covering such information as the commissioner
7 may deem necessary for the ascertainment or assessment
8 of the tax imposed by this article; and shall be signed
9 under penalty of perjury on such forms as the tax com-
10 missioner may prescribe and shall at this time remit any
11 taxes owed or due, if any.

12 The reports prescribed herein are required, although a
13 tax might not be due, or no business transacted, for the
14 period covered by the report.

15 Each person required to file a report under this article
16 shall make and keep such records as shall be prescribed
17 by the tax commissioner that are necessary to substan-
18 tiate the returns required by this article including, but
19 not limited to, inventories, receipts, disbursements and
20 sales, for a period of time not less than three years.

21 Unless otherwise permitted, in writing, by authority of
22 the tax commissioner, each delivery ticket or invoice for
23 each purchase or sale of cigarettes must be recorded upon
24 a serially numbered invoice showing the name and ad-
25 dress of the seller and the purchasers, point of delivery,
26 the date, quantity, price of the product, and the tax must
27 be set out separately or the invoice must indicate whether
28 or not the West Virginia cigarette excise tax is included
29 in the total price and such other reasonable information
30 as the tax commissioner may require. However, these
31 invoicing requirements do not apply to cash sales, and a
32 person making such sales must maintain such records

33 as may be reasonably necessary to substantiate his re-
34 turn.

35 In addition to the tax commissioner's powers set forth
36 in section five, article ten of this chapter, the tax com-
37 missioner or his deputy or agent authorized by him shall
38 have authority to inspect or examine the stock of ciga-
39 rettes kept in and upon the premises of any person where
40 cigarettes are placed, stored or sold and shall inspect or
41 examine the records, books, papers, and any equipment
42 or records of manufacturers, cigarette stamping agents,
43 wholesalers, subjobbers, retail dealers, common carriers,
44 or any other person for the purpose of determining the
45 quantity of cigarettes acquired or disbursed to verify the
46 truth and accuracy of any statement or report and to
47 ascertain whether the tax imposed by this article has
48 been properly paid.

49 In addition to the tax commissioner's powers set forth
50 in section five, article ten of this chapter, and as a further
51 means of obtaining the records, books and papers of a
52 manufacturer, common carrier, wholesaler, subjobber or
53 retailer or any other person and ascertaining the amount
54 of taxes and reports due under this article the com-
55 missioner and his duly appointed agent shall have the
56 power to examine witnesses under oath; and if the
57 witness shall fail or refuse at the request of the tax
58 commissioner or his duly appointed agent to grant access
59 to the books, records or papers, the tax commissioner or
60 such agent shall certify the facts and names to the circuit
61 court of the county having jurisdiction of the party and
62 such court shall thereupon issue summons to such party
63 to appear before the tax commissioner or his agent, at a
64 place designated within the jurisdiction of such court, on
65 a day fixed, to be continued as the occasion may require
66 for good cause shown and give such evidence and lay
67 open for inspection such books and papers as may be
68 required for the purpose of ascertaining the amount of
69 tax and reports due, if any.

§11-17-17. Enforcement powers.

1 Any employee or agent of the tax commissioner, so

2 designated by the tax commissioner, shall have all the
3 lawful powers delegated to members of the department
4 of public safety to enforce the provisions of this article
5 in any county or municipality in this state.

6 Such employee shall execute a bond with security in
7 the sum of thirty-five hundred dollars, payable to the
8 state of West Virginia conditioned for the faithful per-
9 formance of his duties, as such, and such bond shall be
10 approved as to form by the attorney general, and the
11 same shall be filed with the secretary of state and pre-
12 served in his office.

13 The state department of public safety or any county
14 sheriff or his deputy is, upon request of the commissioner,
15 hereby authorized and required to assist in the enforce-
16 ment of the provisions of this article.

**§11-17-19. Penalty for failure to file return when no tax due;
crimes.**

1 (a) *Penalty for failure to file required return where*
2 *no tax due.*—In the case of any failure to make or file
3 a return when no tax is due, as required by this article
4 on the date prescribed therefor, unless it be shown that
5 such failure was due to reasonable cause and not due to
6 willful neglect, there shall be collected a penalty of
7 twenty-five dollars for each month of such failure or
8 fraction thereof.

9 (b) *If any person:*

10 (1) Makes any false entry upon an invoice, package
11 or container of cigarettes required to be made under
12 the provisions of this article, or with intent to evade the
13 tax imposed by this article, presents any such false entry
14 for the inspection of the commissioner, or

15 (2) Prevents or hinders the commissioner or his
16 deputy from making a full inspection of any place where
17 cigarettes subject to the tax imposed by this state are
18 sold or stored, or prevents or hinders the full inspection
19 of invoices, books, records or papers required to be kept
20 under the provisions of this article, or

21 (3) Sells cigarettes in this state without there having
22 been first affixed to each individual package thereof the
23 stamp or meter impression required to be affixed thereto
24 by this article, or

25 (4) Being a retail dealer or subjobber in this state, has
26 in his possession packages of cigarettes not bearing the
27 stamps or meter impression herein required to be affixed
28 thereto or, whoever fails to produce on demand by the
29 commissioner invoices of all cigarettes purchased or re-
30 ceived by him within two years prior to such demand,
31 unless upon satisfactory proof it is shown that such
32 nonproduction is due to providential or other causes
33 beyond his control, or

34 (5) If any wholesale dealer shall sell cigarettes to
35 any person in this state other than to another whole-
36 saler, subjobber or retail dealer and no person in this
37 state other than a wholesaler or subjobber shall sell
38 cigarettes to a retail dealer. It shall be unlawful and a
39 violation of this article for any retail cigarette dealer to
40 purchase or acquire cigarettes from any person other
41 than a wholesaler or subjobber. The original wholesaler
42 who purchases unstamped cigarettes from the manu-
43 facturer is liable for the excise tax and the affixing of
44 the required stamps, or meter impressions, or

45 (6) If any person, firm or corporation, who is not a
46 wholesaler of tobacco products, as provided by this arti-
47 cle, shall have in his possession within the state more
48 than twenty packages of cigarettes not bearing cigarette
49 tax paid indicia of this state, stamps or meter impres-
50 sions, such possession shall be presumed to be for the
51 purpose of evading the payment of the taxes imposed
52 or due thereon, or

53 (7) Whoever violates any of the provisions of this
54 subsection or any lawful rule or regulation promulgated
55 by the commissioner under authority of article ten of
56 this code shall be guilty of a misdemeanor, and, upon
57 conviction thereof, shall be fined not less than three
58 hundred dollars nor more than five thousand dollars,

59 or imprisoned in the county jail for not more than one
60 year, or both, in the discretion of the court.

61 (c) Whoever falsely or fraudulently makes, forges,
62 alters or counterfeits any stamps or meter impressions
63 prescribed, or defined, by the provisions of this article,
64 or its related rules and regulations, and any person who
65 knowingly and willfully makes, causes to be made, pur-
66 chases, receives or has in his possession, any device for
67 forging or counterfeiting any stamp or meter impression,
68 or has in his possession, any stamps not properly issued
69 by the commissioner or his agent or deputy or tampers
70 with or alters any stamping device authorized by the
71 commissioner, or uses more than once any stamp or meter
72 impression provided for and required by this article
73 for the purpose of evading the tax hereby imposed, shall
74 be guilty of a felony, and, upon conviction thereof, shall
75 be sentenced to pay a fine of not less than five thousand
76 dollars nor more than ten thousand dollars and imprison-
77 ed in the penitentiary for a term of not less than one
78 year nor more than five years.

79 (d) Whenever the commissioner or any of his deputies
80 or employees authorized by him or any peace officer of
81 this state for the purpose shall discover any cigarettes
82 subject to tax as provided by this article and upon which
83 the tax has not been paid as herein required, such ciga-
84 rettes shall thereupon be deemed to be contraband, and
85 the commissioner, or such deputy or employee or any
86 peace officer of this state, is hereby authorized and em-
87 powered forthwith to seize and take possession of such
88 cigarettes, without a warrant, and such cigarettes shall
89 be forfeited to the state, and the commissioner shall
90 within a reasonable time thereafter sell such forfeited
91 cigarettes: *Provided*, That such seizure and sale shall
92 not be deemed to relieve any person from fine or im-
93 prisonment as provided herein for violation of any pro-
94 visions of this article. Such sale may be made in any
95 county the tax commissioner deems most convenient and
96 economical. Notice of such sale shall be published as a
97 Class I legal advertisement in compliance with the pro-

98 visions of article three, chapter fifty-nine of this code,
99 and the publication area for such publication shall be
100 the county wherein such seizure was made and the county
101 wherein the sale is to take place. Notice shall be pub-
102 lished at least five days prior to the sale. All taxes and
103 penalties collected under the provisions of this section
104 shall be paid into the state treasury and treated as other
105 taxes collected under this article.

106 (e) Magistrates shall have concurrent jurisdiction
107 with any other courts having jurisdiction for the trial
108 of all misdemeanors arising under this article.

§11-17-22. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article seventeen with like effect as if said act were
5 applicable only to the tax imposed by this article seven-
6 teen and were set forth in extenso in this article seven-
7 teen.

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5b. Additional penalty for late filing or payment.

§11-19-7a. Seizure and sale of soft drink syrups by commissioner; forfei-
ture; collection of tax.

§11-19-10. Penalties; crimes.

§11-19-12. General procedure and administration.

§11-19-5b. Additional penalty for late filing or payment.

1 In addition to the additions to tax, penalties and in-
2 terest authorized in article ten of this chapter, if any
3 taxpayer fails to file a return or pay the proper amount
4 of tax within the time specified herein, the commissioner
5 shall refuse to authorize the purchase of tax stamps
6 or crowns by the delinquent taxpayer: *Provided,*
7 That if the failure to pay was due to reasonable
8 cause, the commissioner may waive this penalty. The
9 taxpayer may request a hearing within sixty days after
10 service of notice of the refusal of the commissioner to
11 authorize the purchase of the tax stamps or crowns. Upon
12 receipt of a written request for a hearing filed within the

13 time prescribed the provision for hearing and appeal,
14 sections nine and ten, article ten of this chapter shall
15 be applicable.

**§11-19-7a. Seizure and sale of soft drink syrups by commis-
sioner; forfeiture; collection of tax.**

1 Whenever the commissioner or any of his duly autho-
2 rized agents shall discover any soft drink syrups, subject
3 to tax as provided by this article and upon which the tax
4 has not been paid as herein required, the commissioner
5 or his duly authorized agent is hereby authorized and
6 empowered forthwith to seize and take possession of such
7 soft drink syrups, which shall thereupon be deemed to be
8 forfeited to the state; and the commissioner shall within
9 a reasonable time thereafter sell such forfeited soft drink
10 syrups; and from the proceeds of such sale shall collect the
11 tax and interest due thereon, together with a penalty of
12 fifty percent of the tax due and the cost incurred in such
13 proceedings, and pay the balance, if any, to the person in
14 whose possession such soft drink syrups were found:
15 *Provided*, That such seizure and sale shall not be deemed
16 to relieve any person from fine or imprisonment provided
17 herein for violation of any provision of this article. Such
18 sale shall be made in the county where most convenient
19 and economical. Notice of such sale shall be published as
20 a Class I legal advertisement in compliance with the pro-
21 visions of article three, chapter fifty-nine of this code,
22 and the publication area for such publication shall be
23 the county wherein such seizure was made and the county
24 wherein the sale is to take place. Notice shall be published
25 at least five days prior to the sale. All moneys collected
26 under the provisions of this section shall be paid into the
27 state treasury and treated as other taxes collected under
28 this article.

§11-19-10. Penalties; crimes.

1 Any person who violates any of the provisions of this
2 article or any lawful rule or regulation promulgated by
3 the tax commissioner for this article under the authority
4 of article ten of this chapter, for the violation of which
5 no other penalty is provided by law, shall be guilty of a

6 misdemeanor, and, upon conviction thereof, shall be
7 punished by a fine of not less than twenty-five dollars
8 nor more than one hundred dollars.

§11-19-12. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article nineteen with like effect as if said act were appli-
5 cable only to the tax imposed by this article nineteen
6 and were set forth in extenso in this article nineteen.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-75. Employer's liability for withheld taxes.

§11-21-95. General procedure and administration.

§11-21-75. Employer's liability for withheld taxes.

1 Every employer required to deduct and withhold tax
2 under this article is hereby made liable for such tax.
3 To the extent not inconsistent with the provisions of
4 this article, all of the provisions of article ten of this
5 chapter and section ninety-two of this article twenty-one,
6 relating to assessment and collection of taxes, and to
7 penalties, additions to tax and interest in respect thereto,
8 shall apply to every employer required to withhold tax
9 under this article. For such purposes any amount re-
10 quired to be withheld and paid over to the tax commis-
11 sioner shall be considered the tax of the employer. Any
12 amount of tax actually deducted and withheld under this
13 article shall be held to be a special fund in trust for the
14 tax commissioner. No employee shall have any right of
15 action against his employer in respect to any moneys
16 deducted and withheld from his wages and paid over to
17 the tax commissioner in compliance or in intended com-
18 pliance with this article.

§11-21-95. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by
4 this article twenty-one with like effect as if said act
5 were applicable only to the tax imposed by this article

6 twenty-one and were set forth in extenso in this article
7 twenty-one.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-38. Crimes.

§11-24-41. General procedure and administration.

§11-24-38. Crimes.

1 (a) *Failure to file returns, submit information, or pay*
2 *tax.*—Any person required under this article, or article
3 ten of this chapter, to pay any tax or estimated tax, or
4 required by law to make a return or declaration, keep
5 any records, or supply any information, for the purpose
6 of the computation, assessment or collection of any tax
7 or estimated tax imposed by this article, who, at the time
8 or times required by law, willfully fails to pay such tax
9 or estimated tax, make such return or declaration, keep
10 such records or supply such information, or willfully
11 furnishes false and fraudulent information, shall, in addi-
12 tion to other penalties provided by law, be guilty of a
13 misdemeanor, and, upon conviction thereof, be fined not
14 more than one thousand dollars or imprisoned for not
15 more than one year, or both, together with the costs of
16 prosecution.

17 (b) *Failure to collect and pay over tax, or attempt to*
18 *defeat or evade tax.*—Any person required under this
19 article to collect, account for, and pay over any tax
20 imposed by this article, who willfully fails to collect
21 or truthfully to account for and pay over such tax, and
22 any person who willfully attempts in any manner to
23 evade or defeat any tax imposed by this article or the
24 payment thereof, shall in addition to other penalties
25 provided by law, be guilty of a misdemeanor, and, upon
26 conviction thereof, be fined not more than one thousand
27 dollars or imprisoned for not more than one year, or
28 both, together with the costs of prosecution.

29 (c) *False returns or certification.*—Any person who
30 willfully makes and subscribes a return which he does
31 not believe to be true and correct as to every material
32 matter, or who willfully makes a certification (as defined
33 in subsection (b) of section fifteen) that is false, shall be

34 guilty of a misdemeanor, and, upon conviction thereof,
35 shall be fined not more than one thousand dollars or
36 imprisoned for not more than one year, or both, together
37 with the costs of prosecution.

38 (d) "*Person*" defined.—The term "person" as used in
39 this section includes, but is not limited to, an officer or
40 employee of a corporation, or a member or employee of
41 a partnership, who, as such officer, employee or member,
42 is under a duty to perform the act in respect of which the
43 violation occurs.

44 (e) *Certificate of tax commissioner as evidence*.—The
45 certificate of the tax commissioner to the effect that a
46 tax has not been paid, that a return has not been filed,
47 or that information has not been supplied as required by
48 or under the provisions of this article or article ten of
49 this chapter shall be evidence that such tax has not
50 been paid, that such return has not been filed, or that
51 such information has not been supplied.

52 (f) *Venue*.—The tax commissioner or any other public
53 officer initiating proceedings against any person under
54 this section shall do so in the county wherein such person
55 resides, or if such person be a nonresident, then in the
56 county wherein such nonresident is employed, or, if such
57 nonresident is not employed in this state, then in the
58 county in which the seat of the state government is
59 located.

§11-24-41. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article
3 ten of this chapter shall apply to the tax imposed by this
4 article twenty-four with like effect as if said act were
5 applicable only to the tax imposed by this article twenty-
6 four and were set forth in extenso in this article twenty-
7 four.

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.

§11-25-8. Denial of claim; violation of article; assessment; interest and penalties; crime.

§11-25-9. Hearings and appeals.

§11-25-8. Denial of claim; violation of article; assessment; interest and penalties; crime.

1 If it is determined that a claim for relief was filed by
2 a claimant who was the recipient of public funds for the
3 payment of his real property taxes or rent during the
4 period for which the claim for relief was filed, or that
5 such claimant received title to his homestead primarily
6 for the purpose of receiving relief under this article, or
7 that a claim for relief was filed with fraudulent intent,
8 such claim for relief shall be disallowed in full, and, if
9 any such claim for relief has been paid, the amount
10 paid may be recovered by assessment in the same manner
11 as taxes are assessed under article ten of this chapter
12 and the assessment shall bear interest from the date of
13 payment of the claim for relief, until refunded to the
14 state tax commissioner, at the rate of one percent per
15 month. Any claimant willfully and knowingly filing a
16 fraudulent claim for relief, and any person who assisted
17 in the preparation or filing of such fraudulent claim
18 for relief or supplied information upon which such fraud-
19 ulent claim for relief was prepared, with knowledge of
20 such fraudulent intent of the claimant, shall be guilty of a
21 misdemeanor, and, upon conviction thereof, shall be
22 fined not less than fifty nor more than one hundred
23 dollars, or imprisoned in the county jail not more than
24 six months, or both fined and imprisoned. If it is de-
25 termined that a claim for relief is excessive and was
26 through negligence incorrectly prepared, ten percent of
27 the corrected claim for relief shall be disallowed, and if
28 the claim for relief has been paid, the excessive portion
29 of any amount paid and the ten percent disallowed shall
30 be similarly recovered by assessment in the same manner
31 as taxes are assessed under article ten of this chapter
32 and the assessment shall bear interest from the date of
33 payment of the claim for relief until refunded to the
34 state tax commissioner at the rate of one percent per
35 month.

§11-25-9. Hearings and appeals.

1 Any claimant aggrieved by the denial in whole or in

2 part of his claim for relief, except when the denial is
3 based upon the late filing of a claim for relief, may de-
4 mand a hearing within thirty days after such denial by
5 filing with the state tax commissioner a verified petition
6 for hearing, which petition shall set forth with definite-
7 ness and particularity the reasons for objecting to such
8 denial. In every case where a petition is filed, the state
9 tax commissioner shall assign a time and place for a
10 hearing upon the same and shall proceed in accordance
11 with the provisions of article ten of this chapter and all
12 of the applicable provisions of said article ten shall be
13 applicable with like effect as if the petition were a peti-
14 tion for reassessment as provided in said article ten. In
15 connection with holding any such hearing, the state tax
16 commissioner shall have all of the relevant powers and
17 authority set forth in said article ten. An appeal from a
18 final decision of the state tax commissioner made after any
19 such hearing may be taken by the claimant in accordance
20 with the provisions of said article ten of this chapter,
21 and such appeal shall be processed and determined with
22 like effect as if said claimant were a "taxpayer" as that
23 term is used in said article ten.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-19a. Collection of taxes due state or any subdivision thereof.

1 Every action or process to collect any tax (other than
2 ad valorem tax on real or personal property and the taxes
3 administered under the provisions of article ten, chapter
4 eleven of this code), interest and penalty due the state or
5 any subdivision thereof shall be brought or issued within
6 five years next after the date on which the taxpayer is
7 required by the statute or ordinance imposing the tax,
8 interest and penalty to file a return and pay the tax due
9 thereunder, unless a different limitation is specifically
10 prescribed by such statute or ordinance. The limitation
11 provided by this section shall likewise apply to enforce-
12 ment of the lien, if any, securing the payment of such tax,

13 interest and penalty, but shall not apply in event of fraud
14 or in event the taxpayer wholly fails to file the return
15 required by the statute or ordinance imposing the tax.

16 The official of the state or any subdivision thereof who
17 is charged with the duty of collecting any tax, interest
18 and penalty, the collection of which is affected by the
19 limitation hereinbefore provided, may, before the run-
20 ning of the five-year period of such limitation has been
21 completed, enter into a written agreement with the tax-
22 payer consenting to an extension of such period for an
23 additional period of not to exceed two years, and any
24 action or process may be brought or issued to collect such
25 tax, interest and penalty at any time prior to the expira-
26 tion of the period so agreed upon. The period so agreed
27 upon may be extended for additional periods not in ex-
28 cess of two years each by subsequent agreements in
29 writing made before the expiration of the period pre-
30 viously agreed upon.

31 The provisions of this section as hereby amended shall
32 apply to tax periods ending on or after the first day of
33 July, one thousand nine hundred seventy-eight, and the
34 provisions of this section as in effect prior to the enact-
35 ment hereof shall apply to tax periods ending before said
36 date.

CHAPTER 96

(Com. Sub. for S. B. 163—By Mr. Oates)

[Passed March 11, 1978; in effect April 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections two, two-b, two-d, two-k, three-b and twenty-five, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article thirteen by adding thereto a new section, designated section two-m; and to amend and reenact section two,

article thirteen-c of said chapter eleven, all relating to business and occupation taxes; imposition of privilege taxes on privileges of generating or producing electric power and on supplying of public service by electric light and power companies; establishing rates and measures of such taxes; establishing rate of tax on electric light and power companies which supply public service but which do not produce electric power; establishing rate of tax on electric power used in certain quantities at plant locations of manufacturers; clarifying tax treatment of electricity generated by manufacturers for own use; relating to tax credit for industrial expansion; and expanding definition of "industrial taxpayer" to include persons exercising privilege of generating or producing electric power.

Be it enacted by the Legislature of West Virginia:

That sections two, two-b, two-d, two-k, three-b and twenty-five, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section two-m; and that section two, article thirteen-c of said chapter eleven be amended and reenacted, all to read as follows:

Article

13. Business and Occupation Tax.

13C. Business and Occupation Tax Credit for Industrial Expansion.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use.

§11-13-2d. Public service or utility business.

§11-13-2k. Banking and other financial business; legislative findings.

§11-13-2m. Business of generating or producing electric power; exception; rates.

§11-13-3b. Definitions; reduction allowed in tax due; how computed.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

§11-13-2. Imposition of privilege tax.

1 There is hereby levied and shall be collected an-
2 nual privilege taxes against the persons, on account of

3 the business and other activities, and in the amounts to
4 be determined by the application of rates against values
5 or gross income as set forth in sections two-a to two-m,
6 inclusive, of this article.

7 If any person liable for any tax under sections two-a,
8 two-b, two-l or ~~two-m~~ shall ship or transport his products
9 or any part thereof out of the state without making
10 sale of such products, the value of the products in the
11 condition or form in which they exist immediately be-
12 fore transportation out of the state shall be the basis
13 for the assessment of the tax imposed in said section,
14 except in those instances in which another measure of
15 the tax is expressly provided. The tax commissioner
16 shall prescribe equitable and uniform rules for ascertain-
17 ing such value.

18 In determining value, however, as regards sales from
19 one to another of affiliated companies or persons, or
20 under other circumstances where the relation between
21 the buyer and seller is such that the gross proceeds
22 from the sale are not indicative of the true value of
23 the subject matter of the sale, the tax commissioner
24 shall prescribe uniform and equitable rules for deter-
25 mining the value upon which such privilege tax shall
26 be levied, corresponding as nearly as possible to the
27 gross proceeds from the sale of similar products of like
28 quality or character where no common interest exists
29 between the buyer and seller but the circumstances
30 and conditions are otherwise similar.

31 Gross income included in the measure of the tax under
32 sections two-a, two-b, two-l and two-m of this article
33 shall neither be added nor deducted in computing the
34 tax levied under the other sections of this article.

35 A person exercising any privilege taxable under sec-
36 tion two-a, two-b, two-l or two-m of this article and
37 engaging in the business of selling his natural resources,
38 manufactured products or electricity at retail in this
39 state shall be required to make returns of the gross
40 proceeds of such retail sales and pay the tax imposed

41 in section two-c of this article for the privilege of en-
42 gaging in the business of selling such natural resources,
43 manufactured products or electricity at retail in this
44 state. But any person exercising any privilege taxable
45 under section two-a, two-b, two-l or two-m of this
46 article and engaging in the business of selling his
47 natural resources, manufactured products or electricity
48 to producers of natural resources, manufacturers, whole-
49 salers, jobbers, retailers or commercial consumers for use
50 or consumption in the purchaser's business shall not be
51 required to pay the tax imposed in section two-c of this
52 article.

53 Persons exercising any privilege taxable under sec-
54 tion two-b or two-m of this article shall not be required
55 to pay the tax imposed in section two-c of this article
56 for the privilege of selling their manufactured products
57 or electricity for delivery outside of this state, but the
58 gross income derived from the sale of such products
59 or electricity outside of this state shall be included in
60 determining the measure of the tax imposed on such
61 person in section two-b or two-m.

62 A person exercising privileges taxable under the other
63 sections of this article, producing coal, oil, natural gas,
64 minerals, timber or other natural resource products, the
65 production of which is taxable under sections two-a
66 and two-l, and using or consuming the same in his
67 business or transferring or delivering the same as any
68 royalty payment, in kind, or the like, shall be deemed
69 to be engaged in the business of mining and producing
70 coal, oil, natural gas, minerals, timber or other natural
71 resource products for sale, profit or commercial use, and
72 shall be required to make returns on account of the
73 production of the business showing the gross proceeds
74 or equivalent in accordance with uniform and equitable
75 rules for determining the value upon which such privilege
76 tax shall be levied, corresponding as nearly as possible
77 to the gross proceeds from the sale of similar products
78 of like quality or character by other taxpayers, which
79 rules the tax commissioner shall prescribe.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use.

1 Upon every person engaging or continuing within this
2 state in the business of manufacturing, compounding or
3 preparing for sale, profit or commercial use, either di-
4 rectly or through the activity of others in whole or in part,
5 any article or articles, substance or substances, com-
6 modity or commodities, or newspaper publishing (in-
7 cluding all gross income or proceeds of sale from circula-
8 tion and advertising), except electric power produced
9 by public utilities or others, the amount of the tax to
10 be equal to the value of the article, substance, commodity
11 or newspaper, manufactured, compounded or prepared for
12 sale, as shown by the gross proceeds derived from the
13 sale thereof by the manufacturer or person compounding
14 or preparing the same, except as otherwise provided,
15 multiplied by a rate of eighty-eight one hundredths of
16 one percent. The measure of this tax is the value of the
17 entire product manufactured, compounded or prepared
18 in this state for sale, profit or commercial use, regard-
19 less of the place of sale or the fact that deliveries may
20 be made to points outside the state. The value of elec-
21 tricity generated by persons taxed under the provisions
22 of this section, which electricity is directly used by
23 such persons in the business of manufacturing and not
24 sold or otherwise transferred or transmitted to others,
25 shall be exempt from the imposition of any tax under
26 this article. The dressing and processing of food by a
27 person, firm or corporation, which food is to be sold
28 on a wholesale basis by such person, firm or corporation
29 shall not be considered as manufacturing or compound-
30 ing, but the sale of these products on a wholesale basis
31 shall be subject to the same tax as is imposed on the
32 business of selling at wholesale as provided in section
33 two-c.

34 It is further provided, however, that in those instances
35 in which the same person partially manufactures, com-

36 pounds or prepares products within this state and
37 partially manufactures, compounds or prepares such
38 products outside of this state the measure of his tax
39 under this section shall be that proportion of the sale
40 price of the product that the payroll cost of manufac-
41 turing within this state bears to the entire payroll cost
42 of manufacturing the product; or, at the option of the
43 taxpayer, the measure of his tax under this section shall
44 be the proportion of the sales value of the articles that
45 the cost of operations in West Virginia bears to the full
46 cost of manufacture of the articles.

§11-13-2d. Public service or utility business.

1 Upon any person engaging or continuing within this
2 state in any public service or utility business, except
3 railroad, railroad car, express, pipeline, telephone and
4 telegraph companies, water carriers by steamboat or
5 steamship and motor carriers, there is likewise hereby
6 levied and shall be collected taxes on account of the
7 business engaged in equal to gross income of the
8 business multiplied by the respective rates as follows:
9 Street and interurban and electric railways, one and
10 four-tenths percent; water companies, four and four-
11 tenths percent, except as to income received by
12 municipally owned water plants; electric light and
13 power companies, four percent on sales and demand
14 charges for domestic purposes and commercial lighting
15 and four percent on sales and demand charges for
16 all other purposes, except as to income received by
17 municipally owned plants producing or purchasing
18 electricity and distributing same: *Provided*, That elec-
19 tric light and power companies which engage in the
20 supplying of public service but which do not generate
21 or produce electric power shall be taxed on the gross
22 income derived therefrom at the rate of three percent
23 on sales and demand charges for domestic purposes
24 and commercial lighting and three percent on sales
25 and demand charges for all other purposes, except as
26 to income received by municipally owned plants:
27 *Provided, however*, That the sale of electric power under
28 this section shall be taxed at the rate of two and forty-six

29 hundredths percent on that portion of the gross proceeds
30 derived from the sale of electric power to a plant location
31 of a customer engaged in a manufacturing activity, if the
32 contract demand at such plant location exceeds two hun-
33 dred thousand kilowatts per hour per year, or if the usage
34 at such plant location exceeds two hundred thousand kilo-
35 watts per hour in a year; natural gas companies, four and
36 twenty-nine hundredths percent on the gross income; toll
37 bridge companies, four and twenty-nine hundredths per-
38 cent; and upon all other public service or utility business,
39 two and eighty-six hundredths percent. The measure of
40 this tax shall not include gross income derived from com-
41 merce between this state and other states of the United
42 States or between this state and foreign countries. The
43 measure of the tax under this section shall include only
44 gross income received from the supplying of public
45 services. The gross income of the taxpayer from any other
46 activity shall be included in the measure of the tax im-
47 posed upon the appropriate section or sections of this
48 article.

§11-13-2k. Banking and other financial business; legislative findings.

1 Upon every person engaging or continuing within this
2 state in the business of banking or financial business,
3 from and after the first day of April, one thousand nine
4 hundred seventy-one, the tax shall be equal to one and
5 fifteen one-hundredths percent of the gross income re-
6 ceived from interest, premiums, discounts, dividends,
7 service fees or charges, commissions, fines, rents from
8 real or tangible personal property, however denominated,
9 royalties, charges for bookkeeping or data processing,
10 receipts from check sales, charges or fees, and receipts
11 from the sale of tangible personal property: *Provided*,
12 That gross income shall not include (a) interest received
13 on the obligations of the United States, its agencies and
14 instrumentalities, (b) interest received on the obligations
15 of this or any other state, territory or possession of the
16 United States, or any political subdivision of any of the
17 foregoing or of the District of Columbia, or (c) interest

18 received on investments or loans primarily secured by
19 first mortgages or deeds of trust on residential property
20 occupied by nontransients: *Provided, however,* That all
21 interest derived on activities exempt under (c) above,
22 shall be reported, as to amounts, on the return of a
23 person taxable under the provisions of this section.

24 Persons taxed pursuant to the provisions of this sec-
25 tion shall not be taxed under sections two-a to two-j,
26 inclusive, or section two-l or two-m of this article.

27 The Legislature hereby finds and declares that it is
28 the intent of the Legislature to subject national banking
29 associations and other financial organizations to the tax
30 imposed by this article, in accordance with the autho-
31 rization contained in section five thousand two hundred
32 nineteen of the revised statutes of the United States as
33 amended by Public Law 91-156 enacted the twenty-
34 fourth day of December, one thousand nine hundred
35 sixty-nine.

**§11-13-2m. Business of generating or producing electric power;
exception; rates.**

1 (1) Upon every person engaging or continuing within
2 this state in the business of generating or producing
3 electric power for sale, profit or commercial use, either
4 directly or through the activity of others, in whole or
5 in part, when the sale thereof is not subject to tax
6 under section two-d of this article, the amount of the
7 tax to be equal to the value of the electric power, as
8 shown by the gross proceeds derived from the sale thereof
9 by the generator or producer of the same multiplied
10 by a rate of four percent, except that the rate shall be two
11 and forty-six hundredths percent on that portion of the
12 gross proceeds derived from the sale of electric power
13 to a plant location of a customer engaged in a manufac-
14 turing activity, if the contract demand at such plant
15 location exceeds two hundred thousand kilowatts per hour
16 per year, or if the usage at such plant location exceeds
17 two hundred thousand kilowatts per hour in a year.

18 (2) The measure of this tax shall be the value of all

19 electric power generated or produced in this state for sale,
20 profit or commercial use, regardless of the place of sale or
21 the fact that transmission may be to points outside this
22 state: *Provided*, That the gross income received by munic-
23 ipally owned plants generating or producing electricity
24 shall not be subject to tax under this article.

§11-13-3b. Definitions; reduction allowed in tax due; how computed.

1 When used in this section, the phrase "normal tax"
2 shall mean the tax computed by the application of rates
3 against values or gross income as set forth in sections
4 two-a to two-m, inclusive, of this article, less exemption
5 at the rate of fifty dollars annually or at the rate of four
6 dollars and sixteen cents per month for the period
7 actually engaged in business.

8 The normal tax shall be computed by the application
9 of rates against values or gross income as set forth in
10 sections two-a to two-m, inclusive, of this article.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

1 Notwithstanding the provisions of section five, article
2 thirteen, chapter eight of this code, no city, town or
3 village shall impose a business and occupation tax:

4 (a) Upon occupations or privileges taxed under sec-
5 tions two-a, two-b, two-c, two-d, two-e, two-g, two-h,
6 two-i and two-j of this article, in excess of rates in effect
7 under this article on January one, one thousand nine
8 hundred fifty-nine;

9 (b) Upon occupations or privileges taxed under section
10 two-k of this article, in excess of one percent of gross
11 income;

12 (c) Under section two-l of this article; or

13 (d) Upon occupations or privileges taxed under section
14 two-m of this article, in excess of the tax rate applicable
15 to such occupations or privileges under section two-b
16 of this article on January one, one thousand nine hundred
17 fifty-nine.

ARTICLE 13C. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION.**§11-13C-2. Meaning of terms; "industrial taxpayer" defined.**

- 1 (a) Any term used in this article shall have the same
2 meaning as when used in comparable context in article
3 thirteen of this chapter, unless a different meaning is
4 clearly required by the context or by definition in this
5 article.
- 6 (b) The term "industrial taxpayer" when used in this
7 article shall mean any person liable for tax under article
8 thirteen of this chapter exercising any of the following
9 privileges:
- 10 (1) Any privilege taxable under section two-b or two-m
11 of article thirteen of this chapter.
- 12 (2) Any privilege taxable under section two-h of article
13 thirteen of this chapter: *Provided*, That such privilege
14 is manufacturing for another, which privilege would be
15 taxable under section two-b or two-m of article thirteen
16 of this chapter if title to the raw materials involved in the
17 manufacturing process were vested in the taxpayer exer-
18 cising the privilege taxable under section two-h of article
19 thirteen of this chapter.

CHAPTER 97

(Com. Sub. for H. B. 1649—By Mr. Bird and Mr. Farley)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from the business and occupation tax; modifying exemption for gross income of coal gasification and liquefaction projects to require prior certification of eligibility by tax commissioner; including pri-

vately-funded projects within the exemption and providing for expiration of the exemption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3. Exemptions.

1 There shall be an exemption in every case of fifty dollars
2 in amount of tax computed under the provisions of this
3 article. A person exercising a privilege taxable hereunder for
4 a fractional part of a tax year shall be entitled to an exemption
5 of the sum bearing the proportion to fifty dollars that the
6 period of time the privilege is exercised bears to a whole year.
7 Only one exemption shall be allowed to any one person,
8 whether he exercises one or more privileges taxable hereunder.

9 The provisions of the article shall not apply to: (a) Insurance
10 companies which pay the state of West Virginia a tax upon
11 premiums: *Provided*, That said exemption shall not extend to
12 that part of the gross income of insurance companies which
13 is received for the use of real property, other than property
14 in which any such company maintains its office or offices,
15 in this state, whether such income be in the form of rentals
16 or royalties; (b) nonprofit cemetery companies organized and
17 operated for the exclusive benefit of their members; (c) fraternal
18 societies, organizations and associations organized and
19 operated for the exclusive benefit of their members and not
20 for profit: *Provided, however*, That said exemption shall not
21 extend to that part of the gross income arising from the sale
22 of alcoholic liquor, food and related services, of such fraternal
23 societies, organizations and associations which are
24 licensed as private clubs under the provisions of article seven,
25 chapter sixty of this code; (d) corporations, associations and
26 societies organized and operated exclusively for religious or
27 charitable purposes; (e) production credit association organized
28 under the provisions of the federal "Farm Credit Act of
29 1933"; (f) any credit union organized under the provisions of

30 chapter thirty-one, or any other chapter of this code: *Pro-*
31 *vided further*, That the exemptions of this section shall not
32 apply to corporations or cooperative associations organized
33 under the provisions of article four, chapter nineteen of this
34 code; (g) gross income derived from advertising service
35 rendered in the business of radio and television broadcasting;
36 and (h) the gross income or gross proceeds of sale of a
37 gasification or liquefaction of coal project in the demonstration,
38 pilot or research stages: *Provided*, That prior to the com-
39 mencement of operation of any such project, the tax commis-
40 sioner shall have first certified the project as eligible for such
41 exemption: *Provided, however*, That such exemption shall
42 expire seven years from the date the project first receives gross
43 income or gross proceeds from sales.

CHAPTER 98

(Com. Sub for H. B. 1173—By Mr. Speaker, Mr. Kopp)

[Passed March 13, 1978; in effect April 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to business and occupation tax; relating to computation and payment of tax; and specifying periods for returns and remittances by certain classes of taxpayers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-4. Computation of tax; payment.

§11-13-5. Return and remittance by taxpayer.

§11-13-4. Computation of tax; payment.

1 The taxes levied hereunder shall be due and payable as
2 follows:

3 (a) For taxpayers whose estimated tax under this article
4 exceeds one thousand dollars per month, the tax shall be due
5 and payable in monthly installments on or before the last
6 day of the month following the month in which the tax
7 accrued. Each such taxpayer shall, on or before the last day
8 of each month, make out an estimate of the tax for which
9 he is liable for the preceding month, sign the same and mail
10 it together with a remittance, in the form prescribed by the
11 tax commissioner, of the amount of tax to the office of the
12 commissioner. In estimating the amount of tax due for each
13 month, the taxpayer may deduct one twelfth of any appli-
14 cable tax credits allowable for the taxable year and one twelfth
15 of the total exemption allowed for such year.

16 (b) For taxpayers whose estimated tax under this article
17 does not exceed one thousand dollars per month, the tax
18 shall be due and payable in quarterly installments within one
19 month from the expiration of each quarter in which the tax
20 accrued. Each such taxpayer shall, within one month from
21 the expiration of each quarter, make out an estimate of the
22 tax for which he is liable for such quarter, sign the same
23 and mail it together with a remittance, in the form prescribed
24 by the tax commissioner, of the amount of tax to the office
25 of the commissioner. In estimating the amount of tax due for
26 each quarter, the taxpayer may deduct one fourth of any
27 applicable tax credits allowable for the taxable year and
28 one fourth of the total exemption allowed for such year.

29 (c) When the total tax for which any person is liable under
30 this article does not exceed two hundred dollars in any year,
31 the taxpayer may pay the same quarterly as aforesaid, or,
32 with the consent in writing of the tax commissioner, at the
33 end of the month next following the close of the tax year.

34 (d) The above provisions of this section notwithstanding,
35 the tax commissioner, if he deems it necessary to ensure
36 payment of the tax, may require the return and payment under
37 this section for periods of shorter duration than those pre-
38 scribed above.

§11-13-5. Return and remittance by taxpayer.

1 On or before the expiration of one month after the end

2 of the tax year, each taxpayer shall make a return for the
3 entire tax year showing the gross proceeds of sales or gross
4 income of business, trade or calling, and compute the amount
5 of tax chargeable against him in accordance with the pro-
6 visions of this article and deduct the amount of monthly or
7 quarterly payments (as hereinbefore provided), if any, and
8 transmit with his report a remittance in the form prescribed
9 by the tax commissioner covering the residue of the tax
10 chargeable against him to the office of the tax commissioner;
11 such return shall be signed by the taxpayer if made by an
12 individual, or by the president, vice president, secretary or
13 treasurer of a corporation if made on behalf of a corporation.
14 If made on behalf of a partnership, joint adventure, associa-
15 tion, trust, or any other group or combination acting as a
16 unit, any individual delegated by such firm, copartnership,
17 joint adventure, association, trust or any other group or
18 combination acting as a unit shall sign the return on behalf
19 of the taxpayer. The tax commissioner, for good cause
20 shown, may extend the time for making the annual return
21 on the application of any taxpayer and grant such reasonable
22 additional time within which to make the same as may,
23 by him, be deemed advisable.

CHAPTER 99

(Com. Sub. for S. B. 147—By Mr. Brotherton, Mr. President)

[Passed March 7, 1978; in effect April 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax credit for industrial expansion; permitting the credit to be taken only against the tax imposed on the activities of manufacturing, manufacturing for another, and the production or generation of electricity; and providing for applicability of section as amended.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen-c, 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 13C. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION.

§11-13C-3. Amount of credit allowed industrial taxpayers.

1 (a) There shall be allowed to industrial taxpayers as
2 defined in section two of this article, a credit against busi-
3 ness and occupation tax imposed by article thirteen of
4 this chapter. The amount of credit shall be equal to ten
5 percent of the cost of qualified investment made for
6 industrial expansion as defined in section four of this
7 article and shall be applied over a ten-year period to
8 reduce the business and occupation tax imposed under
9 sections two-b, two-h and two-m of article thirteen of
10 this chapter at the rate of one tenth of the amount of
11 such credit per taxable year, commencing with the tax-
12 able year that such qualified investment is first placed
13 in service or use.

14 (b) Notwithstanding any provision herein to the con-
15 trary, the annual credit allowance shall not reduce the
16 business and occupation tax imposed by sections two-b,
17 two-h and two-m of article thirteen of this chapter below
18 fifty percent of the amount which would be imposed for
19 such taxable year in the absence of this credit against
20 tax computed before application of the annual exemp-
21 tion allowed by section three of said article thirteen:
22 *Provided*, That the tax imposed under section two-h of
23 article thirteen shall not be reduced by more than fifty
24 percent of the tax attributable to a privilege that is
25 manufacturing for another and which privilege would
26 be taxable under section two-b or two-m of article thir-
27 teen of this chapter if title to the raw materials involved
28 in the manufacturing process were vested in the tax-
29 payer exercising the privilege taxable under section
30 two-h of article thirteen of this chapter.

31 (c) No carry-over shall be allowed for the amount of

32 any unused portion of any annual credit allowance, nor
33 shall any credit be allowed against any tax liability for
34 any year prior to the twenty-fifth day of July, one thou-
35 sand nine hundred sixty-nine, by reason of an assessment
36 issuing within any period after the effective date of this
37 article, which assessment is, in whole or in part for any
38 period prior to the twenty-fifth day of July, one thousand
39 nine hundred sixty-nine.

40 (d) *Effective date.*—The provisions of this section, as
41 amended, shall apply to all property purchased for in-
42 dustrial expansion on or after the first day of April, one
43 thousand nine hundred seventy-eight. Property pur-
44 chased for industrial expansion shall be deemed to have
45 been purchased prior to the first day of April, one thou-
46 sand nine hundred seventy-eight, only if:

47 (1) The physical construction, reconstruction or erec-
48 tion of the property was begun prior to said first day of
49 April, or such property was constructed, reconstructed,
50 erected or acquired pursuant to a written contract exist-
51 ing on or before the thirty-first day of March, one thou-
52 sand nine hundred seventy-eight, and limited to the
53 provision of such contract as of such date, binding on
54 the taxpayer;

55 (2) The machinery or equipment was owned by the
56 taxpayer on or before the thirty-first day of March, one
57 thousand nine hundred seventy-eight, or was acquired
58 by the taxpayer pursuant to a binding purchase contract
59 which was in effect on such date;

60 (3) In the case of leased property, there was a binding
61 lease or contract to lease identifiable equipment in effect
62 on or before the thirty-first day of March, one thousand
63 nine hundred seventy-eight. As to property purchased
64 for industrial expansion prior to the first day of April,
65 one thousand nine hundred seventy-eight, or qualified
66 investments for industrial expansion placed into service
67 or use before said first day of April, the provisions of
68 this section as then in effect shall be fully and com-
69 pletely preserved.

CHAPTER 100

(Com. Sub. for S. B. 143—By Mr. Brotherton, Mr. President)

[Passed March 11, 1978; in effect June 1, 1978. Approved by the Governor.]

AN ACT to repeal section sixteen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and twelve of said article fourteen; and to further amend said article fourteen by adding thereto a new section, designated section three-a, all relating to increasing the gasoline and special fuel excise tax; providing for the applicability of rate increase to gasoline or special fuel on hand or in inventory; and increasing the amount of tax refunded on tax-paid gallonage consumed in buses.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and twelve of said article fourteen be amended and reenacted; and that said article fourteen be further amended by adding thereto a new section, designated section three-a, all to read as follows:

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

§11-14-3a. Applicability of rate increase to gasoline or special fuel on hand or in inventory.

§11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of ten and one-half
2 cents per gallon on all gasoline or special fuel, which tax
3 shall be computed in accordance with the appropriate
4 measure of tax as hereinafter prescribed in this article.

§11-14-3a. Applicability of rate increase to gasoline or special fuel on hand or in inventory.

1 It is hereby declared to be the intent of the Legislature

2 that one rate of excise tax shall be applicable to all
3 quantities of gasoline or special fuel in this state on and
4 after the effective date of any increase in the rate of such
5 tax. Any gasoline or special fuel on hand or in inventory
6 on the effective date of any rate increase is hereby
7 deemed to have been purchased or received on such date.

8 Every distributor, retail dealer or importer subject to
9 the tax imposed under this article, who, on the effective
10 date of any rate increase, has on hand or in inventory
11 any gasoline or special fuel upon which tax or any por-
12 tion thereof has been previously accrued or paid, shall,
13 within thirty days after such effective date, take a physi-
14 cal inventory and file a report thereof with the com-
15 missioner, in the form prescribed by him, and shall pay
16 to the commissioner at the time of filing such report any
17 additional tax due under an increased rate.

***§11-14-12. Partial refund of tax on tax-paid gallonage con-
sumed in buses.**

1 Any person regularly operating any vehicle under a
2 certificate of public convenience and necessity or under
3 a contract carrier permit for transportation of persons,
4 when such person purchases tax-paid gasoline or tax-
5 paid special fuel, as required by this article, in an
6 amount of twenty-five gallons or more, and complies
7 with all the requirements of section eleven, with the
8 exception of off-highway use, may be refunded an amount
9 equal to six cents per gallon under authority of this
10 section: *Provided*, That said gallons of gasoline or special
11 fuel shall have been consumed in the operation of urban
12 and suburban bus lines, and the majority of passengers
13 use the bus for traveling a distance not exceeding forty
14 miles, measured one way, on the same day between their
15 places of abode and their places of work, shopping areas
16 or schools. There shall be presented to the commissioner
17 an affidavit accompanied by proof of such purchase and

* Clerk's Note—According to the Senate Journal of March 11, 1978, this section was enacted, §11-14-12, subsequent to the enactment of S. B. 371 (Chapter 95) which also amends section 12.

18 payment as required by section eleven of this article.
 19 The right to a refund under this section shall not be
 20 assignable, and any assignment so made shall be void.

CHAPTER 101

(Com. Sub. for S. B. 149—By Mr. Brotherton, Mr. President)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section ten, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to refund of gasoline and special fuel excise tax for gallons lost due to evaporation; and providing for computation of amount and petition for such refund.

Be it enacted by the Legislature of West Virginia:

That section ten, 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.

***§11-14-10. Refund of taxes illegally collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.**

1 The commissioner is hereby authorized to refund from
 2 the funds collected under the provisions of this article
 3 any tax, interest, additions to tax or penalties which
 4 have been erroneously or illegally collected from any
 5 person.

6 If any distributor or producer, retail dealer or im-
 7 porter, while he shall be the owner thereof, loses any
 8 gallons of gasoline or special fuel through fire, lightning,

* Clerk's Note—According to the Senate Journal of March 11, 1978, this section was enacted, §11-14-10, subsequent to the enactment of 371 (Chapter 95) which also amends section 10.

9 breakage, flood or other casualty, which gallons have
10 been previously included in the tax by or for such per-
11 son, he shall be refunded a sum equal to the amount
12 of the tax paid upon such gallons so lost.

13 Any distributor or producer, retail dealer or importer
14 or other person who purchases or receives gasoline or
15 special fuel in this state upon which the tax imposed
16 by this article has been paid, and who subsequently ex-
17 ports the same from this state (except in a supply tank),
18 shall be entitled to a refund for the amount of tax
19 paid.

20 Any dealer as defined in section two, article eleven-c,
21 chapter forty-seven of the code, who purchases or receives
22 gasoline or special fuel in this state upon which the tax
23 imposed by this article has been paid, shall be entitled to
24 an annual refund for gallons lost through evaporation.
25 Such refund shall be computed at the rate of tax imposed
26 per gallon under this article on all gallons of gasoline or
27 special fuel actually lost due to evaporation, not exceeding
28 one half of one percent of the adjusted total accountable
29 gallons, computed as determined by the commissioner.

30 Every distributor or producer, retail dealer or im-
31 porter shall be entitled to a refund from this state of the
32 amount resulting from a change of rate decreasing the
33 tax under the provisions of this article on gasoline and
34 special fuel on hand and in inventory on the effective
35 date of such rate change, which gasoline and special fuel
36 shall have been included in any previous computation
37 by which the tax imposed by this article has been paid
38 by him.

39 No refund shall be made under this section unless
40 a written petition therefor sets forth the circumstances
41 upon which said refund is claimed. A claim for refund
42 shall be subject to the provisions of section fourteen,
43 article ten, chapter eleven of the code. The petition shall
44 be in such form and with such supporting records as
45 required by the commissioner and shall be made under
46 the penalty of perjury. Petitions for refunds other than
47 for evaporation loss shall be filed with the commissioner

48 within three years from the end of the month in which
49 the tax was erroneously or illegally paid or the gallons
50 were exported or lost by casualty, or in which a change
51 of rate took effect, as provided in this section. Petitions
52 for refund for evaporation loss shall be filed within three
53 years from the end of the year in which such evapora-
54 tion occurred, but no such refund shall be allowed for
55 any period prior to the year one thousand nine hundred
56 seventy-eight.

CHAPTER 102

(Com. Sub. for S. B. 145—By Mr. Brotherton, Mr. President)

[Passed March 7, 1978; in effect June 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article seventeen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the cigarette tax law; increasing the rate of cigarette tax levy and deleting reference to additional tax for support of schools; providing for any increased rate to be applicable to cigarettes in inventory on the date of any rate change, with inventory and report to be made to state tax commissioner; providing the time period for the making of report and payment of additional tax; and providing a discount on any additional tax owed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. CIGARETTE TAX ACT.

§11-17-3. Levy of tax; ratio.

§11-17-4. Effect of rate changes; cigarettes on hand or in inventory; report; discount.

§11-17-3. Levy of tax; ratio.

1 For the purpose of providing revenue for the general

2 revenue fund of the state, an excise tax is hereby levied
3 and imposed on sales of cigarettes at the rate of seventeen
4 cents on each twenty cigarettes or in like ratio on any
5 part thereof. Only one sale of the same article shall be
6 used in computing the amount of tax due hereunder.

§11-17-4. Effect of rate changes; cigarettes on hand or in inventory; report; discount.

1 Notwithstanding other provisions of this article, it is
2 hereby declared to be the intent of the Legislature that
3 one rate of excise tax shall be applicable to all quantities
4 of cigarettes in this state on and after the effective date
5 of any change of rate under the provisions of this article.
6 Any cigarettes, on hand or in inventory, on the effective
7 date of any rate change are hereby deemed to have been
8 purchased or received on such date.

9 Every wholesaler, subjobber, subjobber dealer, retail
10 dealer and vending machine operator who, on the ef-
11 fective date of any rate change, has on hand or in in-
12 ventory any cigarettes upon which the tax or any portion
13 thereof has been previously paid shall take a physical
14 inventory and shall file a report thereof with the tax
15 commissioner, in the format as required by the tax com-
16 missioner, within thirty days thereafter, and shall pay to
17 the tax commissioner at the time of filing such report any
18 additional tax due under an increased rate. A discount of
19 four percent will be allowed on all tax due for persons
20 who pay additional tax under this section.

CHAPTER 103

(S. B. 150—By Mr Brotherton, Mr. President)

[Passed March 3, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating

meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same mean-
2 ing as when used in a comparable context in the laws of
3 the United States relating to income taxes, unless a
4 different meaning is clearly required. Any reference in
5 this article to the laws of the United States shall mean
6 the provisions of the Internal Revenue Code of 1954, as
7 amended, and such other provisions of the laws of the
8 United States as relate to the determination of income
9 for federal income tax purposes. All amendments made
10 to the laws of the United States prior to the first day of
11 January, one thousand nine hundred seventy-eight, shall
12 be given effect in determining the taxes imposed by this
13 article for the tax period beginning the first day of Janu-
14 ary, one thousand nine hundred seventy-eight, and there-
15 after, but no amendment to the laws of the United States
16 made on or after the first day of January, one thousand
17 nine hundred seventy-eight, shall be given effect.

CHAPTER 104

(S. B. 144—By Mr. Brotherton, Mr. President)

[Passed March 3, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context
3 in the laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition in this article. Any reference
6 in this article to the laws of the United States or to the
7 Internal Revenue Code or to the federal income tax law
8 shall mean the provisions of the laws of the United
9 States as relate to the determination of income for
10 federal income tax purposes. All amendments made
11 to the laws of the United States prior to the first
12 day of January, one thousand nine hundred seventy-
13 eight, shall be given effect in determining the taxes im-
14 posed by this article for the tax period beginning the first
15 day of January, one thousand nine hundred seventy-
16 eight, and thereafter, but no amendment to laws of the
17 United States made on or after the first day of January,
18 one thousand nine hundred seventy-eight, shall be given
19 effect.

20 (b) *Certain terms defined.*—For purposes of this
21 article:

22 (1) The term “tax commissioner” means the tax com-
23 missioner of the state of West Virginia or his delegate.

24 (2) The term “corporation” means and includes a
25 joint-stock company or any association which is taxable
26 as a corporation under the federal income tax law.

27 (3) The term “domestic corporation” means any cor-
28 poration organized under the laws of West Virginia.

29 (4) The term “foreign corporation” means any cor-
30 poration other than a domestic corporation.

31 (5) The term "state" means any state of the United
32 States, the District of Columbia, the Commonwealth of
33 Puerto Rico, any territory or possession of the United
34 States, and any foreign country or political subdivision
35 thereof.

36 (6) The term "taxable year" means the taxable year for
37 which the taxable income of the taxpayer is computed
38 under the federal income tax law.

39 (7) The term "taxpayer" means a corporation subject
40 to the tax imposed by this article.

41 (8) The term "tax" includes, within its meaning, inter-
42 est and penalties, unless the intention to give it a more
43 limited meaning is disclosed by the context.

44 (9) The term "commercial domicile" means the prin-
45 cipal place from which the trade or business of the tax-
46 payer is directed or managed.

47 (10) The term "compensation" means wages, salaries,
48 commissions and any form of remuneration paid to em-
49 ployees for personal services.

50 (11) The term "West Virginia taxable income" means
51 the taxable income of a corporation as defined by the
52 laws of the United States for federal income tax purposes,
53 adjusted as provided in section six: *Provided*, That in the
54 case of a corporation having income from business activ-
55 ity which is taxable without this state, its "West Vir-
56 ginia taxable income" shall be such portion of its taxable
57 income as so defined and adjusted as is allocated or ap-
58 portioned to this state under the provisions of section
59 seven.

60 (12) The term "business income" means income aris-
61 ing from transactions and activity in the regular course
62 of the taxpayer's trade or business and includes income
63 from tangible and intangible property if the acquisition
64 and disposition of the property constitute integral parts
65 of the taxpayer's regular trade or business operations.

66 (13) The term "nonbusiness income" means all income
67 other than business income.

68 (14) The term "public utility" means any business
69 activity to which the jurisdiction of the public service
70 commission of West Virginia extends under section one,
71 article two, chapter twenty-four of the code of West
72 Virginia.

73 (15) The term "this code" means the code of West
74 Virginia, one thousand nine hundred thirty-one, as
75 amended.

76 (16) The term "this state" means the state of West
77 Virginia.

CHAPTER 105

(S. B. 164—By Mr. Jones)

[Passed February 15, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-a, relating to refund of moneys paid at a sheriff's sale for land subject to an erroneous assessment or otherwise nonexistent.

Be it enacted by the Legislature of West Virginia:

That article three, chapter eleven-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-a, to read as follows:

ARTICLE 3. SALE OF LAND FOR TAXES.

§11A-3-20a. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

1 If, after payment of the amount bid at a sheriff's sale
2 and upon the examination of title, as required by section
3 twenty of this article, the purchaser shall discover

4 that the property purchased at such sale is the subject
5 of an erroneous assessment or is otherwise non-
6 existent, such purchaser may submit the certificate of an
7 attorney-at-law that the property is the subject of an
8 erroneous assessment or is otherwise nonexistent, where-
9 upon the sheriff shall cause the moneys so paid to be
10 refunded: *Provided*, That the certificate shall be submitted
11 by the first day of January of the year following the sale.
12 Upon refund, the sheriff shall inform the assessor of
13 the erroneous assessment for the purpose of having the
14 assessor correct said error.

CHAPTER 106

(Com. Sub. for H. B. 1442—By Mr. Speaker, Mr. Kopp)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five of said chapter by adding thereto three new sections, designated sections three-b, three-c and twenty; to amend and reenact sections five and seven of said article five; to amend and reenact sections three, ten and fifteen, article six of said chapter; to amend and reenact section one, article six-a of said chapter; and to amend and reenact section eight, article seven of said chapter twenty-one-a; to amend said chapter by adding thereto a new article, designated article eleven, all relating to unemployment compensation; extending unemployment compensation coverage to certain governmental employees, certain agricultural employees, certain domestic workers and employees of non-profit schools; rate of contribution; prohibiting payments in certain situations to employees of schools and educational institutions and professional athletes; defining an agricultural crew leader as an employer under certain circumstances; increasing taxable wage base from four thousand two hundred dollars to six thousand dollars for both federal and state unemployment insurance taxes; permitting extended benefits during

certain periods of high unemployment; allowing benefits to pregnant women under certain circumstances; the addition of social security benefits for disqualification purposes; allowing decisions to be sent by regular mail rather than certified mail; bringing West Virginia law into compliance with the federal unemployment compensation amendments of one thousand nine hundred seventy-six, effective after the first day of January, one thousand nine hundred seventy-eight; increasing to fifty-five percent the weekly benefit rate; designating the persons responsible for financing decisions; excluding from the average insured weekly wage certain covered service; providing for expiration of certain provisions; excluding certain items from the definition of wages; removing certain waiting period for receipt of benefits.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Department of Employment Security.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
- 6A. Extended Benefits Program.
7. Claim Procedure.
11. Limitations on Certain Provisions.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-1. Purpose of chapter.

§21A-1-3. Definitions.

§21A-1-1. Purpose of chapter.

1. The purpose of this chapter is to provide reasonable and

2 effective means for the promotion of social and economic
3 security by reducing as far as practicable the hazards of unem-
4 ployment. In the furtherance of this objective, the Legislature
5 establishes a compulsory system of unemployment reserves in
6 order to:

7 (1) Provide a measure of security to the families of unem-
8 ployed persons.

9 (2) Guard against the menace to health, morals and welfare
10 arising from unemployment.

11 (3) Maintain as great purchasing power as possible, with
12 a view to sustaining the economic system during periods of
13 economic depression.

14 (4) Stimulate stability of employment as a requisite of
15 social and economic security.

16 (5) Allay and prevent the debilitating consequences of poor
17 relief assistance.

18 To give effect to these purposes the Legislature establishes
19 the following system in the belief that the purposes are reason-
20 ably within the sphere of governmental control and that the
21 agencies created for their accomplishment are the fairest and
22 most effective devices now available.

23 It is the specific intent of the Legislature that the provisions
24 of this article shall be construed as to comply with the Unem-
25 ployment Compensation Amendments of 1976 (Public Law
26 94-566) and for that reason the provisions of this chapter are
27 to be effective the first day of January, one thousand nine
28 hundred seventy-eight.

§21A-1-3. Definitions.

1 As used in this chapter, unless the context clearly requires
2 otherwise:

3 "Administration fund" means the employment security ad-
4 ministration fund, from which the administrative expenses
5 under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for

7 employment paid by an employer during a twelve-month period
8 ending with June thirty of any calendar year.

9 "Average annual payroll" means the average of the last
10 three annual payrolls of an employer.

11 "Base period" means the first four out of the last five com-
12 pleted calendar quarters immediately preceding the first day
13 of the individual's benefit year.

14 "Base period employer" means any employer who in the
15 base period for any benefit year paid wages to an individual
16 who filed claim for unemployment compensation within such
17 benefit year.

18 "Base period wages" means wages paid to an individual
19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the
21 fifty-two-week period beginning with the first day of the calen-
22 dar week in which a valid claim is effective, and thereafter the
23 fifty-two-week period beginning with the first day of the cal-
24 endar week in which such individual next files a valid claim
25 for benefits after the termination of his last preceeding benefit
26 year. An initial claim for benefits filed in accordance with the
27 provisions of this chapter shall be deemed to be a valid claim
28 within the purposes of this definition if the individual has been
29 paid wages in his base period sufficient to make him eligible
30 for benefits under the provisions of this chapter.

31 "Benefits" means the money payable to an individual with
32 respect to his unemployment.

33 "Board" means board of review.

34 "Calendar quarter" means the period of three consecutive
35 calendar months ending on March thirty-one, June thirty,
36 September thirty or December thirty-one, or the equivalent
37 thereof as the commissioner may by regulation prescribe.

38 "Commissioner" means the employment security commis-
39 sioner.

40 "Computation date" means June thirty of the year imme-

41 diately preceding the January one on which an employer's con-
42 tribution rate becomes effective.

43 "Employing unit" means an individual, or type of organi-
44 zation, including any partnership, association, trust, estate,
45 joint-stock company, insurance company, corporation (do-
46 mestic or foreign), state or political subdivision thereof, or
47 their instrumentalities, as provided in subdivision (9) (b) of the
48 definition of "employment" in this section, institution of higher
49 education, or the receiver, trustee in bankruptcy, trustee or
50 successor thereof, or the legal representative of a deceased
51 person, which has on January first, one thousand nine hun-
52 dred thirty-five, or subsequent thereto, had in its employ one
53 or more individuals performing service within this state.

54 "Employer" means:

55 (1) Until January one, one thousand nine hundred seventy-
56 two, any employing unit which for some portion of a day, not
57 necessarily simultaneously, in each of twenty different calendar
58 weeks, which weeks need not be consecutive, within either the
59 current calendar year, or the preceding calendar year, has had
60 in employment four or more individuals irrespective of whether
61 the same individuals were or were not employed on each of
62 such days;

63 (2) Any employing unit which is or becomes a liable em-
64 ployer under any federal unemployment tax act;

65 (3) Any employing unit which has acquired or acquires
66 the organization, trade or business, or substantially all the
67 assets thereof, of an employing unit which at the time of such
68 acquisition was an employer subject to this chapter;

69 (4) Any employing unit which, after December thirty-one,
70 one thousand nine hundred sixty-three, and until January one,
71 one thousand nine hundred seventy-two, in any one calendar
72 quarter, in any calendar year, has in employment four or more
73 individuals and has paid wages for employment in the total
74 sum of five thousand dollars or more, or which, after such date,
75 has paid wages for employment in any calendar year in the
76 sum total of twenty thousand dollars or more;

- 77 (5) Any employing unit which, after December thirty-one,
78 one thousand nine hundred sixty-three, and until January one,
79 one thousand nine hundred seventy-two, in any three-week
80 period, in any calendar year, has in employment ten or more
81 individuals;
- 82 (6) For the effective period of its election pursuant to sec-
83 tion three, article five of this chapter, any employing unit
84 which has elected to become subject to this chapter;
- 85 (7) Any employing unit which, after December thirty-one,
86 one thousand nine hundred seventy-one, (i) in any calendar
87 quarter in either the current or preceding calendar year paid
88 for service in employment wages of one thousand five hundred
89 dollars or more, or (ii) for some portion of a day in each of
90 twenty different calendar weeks, whether or not such weeks
91 were consecutive, in either the current or the preceding calen-
92 dar year had in employment at least one individual (irrespec-
93 tive of whether the same individual was in employment in each
94 such day) except as provided in subdivisions eleven and twelve
95 hereof;
- 96 (8) Any employing unit for which service in employment,
97 as defined in subdivision (9) of the definition of "employment"
98 in this section, is performed after December thirty-one, one
99 thousand nine hundred seventy-one;
- 100 (9) Any employing unit for which service in employment,
101 as defined in subdivision (10) of the definition of "employ-
102 ment" in this section, is performed after December thirty-one,
103 one thousand nine hundred seventy-one;
- 104 (10) Any employing unit for which service in employment,
105 as defined in subsections (b) and (c) of subdivision (9) of the
106 definition of "employment" in this section, is performed after
107 December thirty-one, one thousand nine hundred seventy-
108 seven;
- 109 (11) Any employing unit for which agricultural labor, as
110 defined in subdivision (12) of the definition of "employment"
111 in this section, is performed after December thirty-one, one
112 thousand nine hundred seventy-seven;

113 (12) Any employing unit for which domestic service in
114 employment, as defined in subdivision (13) of the definition
115 of "employment" in this section, is performed after December
116 thirty-one, one thousand nine hundred seventy-seven.

117 "Employment," subject to the other provisions of this sec-
118 tion, means:

119 (1) Service, including service in interstate commerce, per-
120 formed for wages or under any contract of hire, written or
121 oral, express or implied;

122 (2) Any service performed prior to January one, one thou-
123 sand nine hundred seventy-two, which was employment as
124 defined in this section prior to such date and, subject to the
125 other provisions of this section, service performed after Dec-
126 ember thirty-one, one thousand nine hundred seventy-one, by
127 an employee, as defined in section 3306(i) of the Federal
128 Unemployment Tax Act, including service in interstate com-
129 merce;

130 (3) Any service performed prior to January one, one thou-
131 sand nine hundred seventy-two, which was employment as
132 defined in this section prior to such date and, subject to the
133 other provisions of this section, service performed after De-
134 cember thirty-one, one thousand nine hundred seventy-one,
135 including service in interstate commerce, by any officer of a
136 corporation;

137 (4) An individual's entire service, performed within or
138 both within and without this state if: (a) The service is localized
139 in this state; or (b) the service is not localized in any state but
140 some of the service is performed in this state and (i) the base
141 of operations, or, if there is no base of operations, then the
142 place from which such service is directed or controlled, is in
143 this state; or (ii) the base of operations or place from which
144 such service is directed or controlled is not in any state in which
145 some part of the service is performed but the individual's resi-
146 dence is in this state;

147 (5) Service not covered under paragraph four of this sub-
148 division and performed entirely without this state with respect
149 to no part of which contributions are required and paid under

150 an unemployment compensation law of any other state or of
151 the federal government, shall be deemed to be employment
152 subject to this chapter if the individual performing such ser-
153 vices is a resident of this state and the commissioner approves
154 the election of the employing unit for whom such services are
155 performed that the entire service of such individual shall be
156 deemed to be employment subject to this chapter;

157 (6) Service shall be deemed to be localized within a state,
158 if: (a) The service is performed entirely within such state; or
159 (b) the service is performed both within and without such state,
160 but the service performed without such state is incidental to
161 the individual's service within this state, as, for example, is
162 temporary or transitory in nature or consists of isolated trans-
163 actions;

164 (7) Services performed by an individual for wages shall be
165 deemed to be employment subject to this chapter unless and
166 until it is shown to the satisfaction of the commissioner that:
167 (a) Such individual has been and will continue to be free from
168 control or direction over the performance of such services,
169 both under his contract of service and in fact; and (b) such
170 service is either outside the usual course of the business for
171 which such service is performed or that such service is per-
172 formed outside of all the places of business of the enterprise
173 for which such service is performed; and (c) such individual is
174 customarily engaged in an independently established trade,
175 occupation, profession or business;

176 (8) All service performed by an officer or member of the
177 crew of an American vessel (as defined in section three hun-
178 dred five of an act of Congress entitled Social Security Act
179 Amendment of 1946, approved August tenth, one thousand
180 nine hundred forty-six) on or in connection with such vessel,
181 provided that the operating office, from which the operations
182 of such vessel operating on navigable waters within and with-
183 out the United States is ordinarily and regularly supervised,
184 managed, directed and controlled, is within this state;

185 (9) (a) Service performed after December thirty-one, one
186 thousand nine hundred seventy-one, by an individual in the
187 employ of this state or any of its instrumentalities (or in the

188 employ of this state and one or more other states or their in-
189 strumentalities) for a hospital or institution of higher education
190 located in this state: *Provided*, That such service is excluded
191 from "employment" as defined in the Federal Unemployment
192 Tax Act solely by reason of section 3306 (c) (7) of that act
193 and is not excluded from "employment" under subdivision (11)
194 of the exclusion from employment;

195 (b) Service performed after December thirty-one, one thou-
196 sand nine hundred seventy-seven, in the employ of this state
197 or any of its instrumentalities or political subdivision thereof
198 or any of its instrumentalities or any instrumentality of more
199 than one of the foregoing or any instrumentality of any fore-
200 going and one or more other states or political subdivisions:
201 *Provided*, That such service is excluded from "employment"
202 as defined in the Federal Unemployment Tax Act by section
203 3306 (c) (7) of that act and is not excluded from "employ-
204 ment" under subdivision (15) of the exclusion from employ-
205 ment in this section; and

206 (c) Service performed after December thirty-one, one thou-
207 sand nine hundred seventy-seven, in the employ of a nonprofit
208 educational institution which is not an institution of higher
209 education;

210 (10) Service performed after December thirty-one, one
211 thousand nine hundred seventy-one, by an individual in the
212 employ of a religious, charitable, educational or other organi-
213 zation but only if the following conditions are met:

214 (a) The service is excluded from "employment" as defined
215 in the Federal Unemployment Tax Act solely by reason of
216 section 3306 (c) (8) of that act; and

217 (b) The organization had four or more individuals in em-
218 ployment for some portion of a day in each of twenty different
219 weeks, whether or not such weeks were consecutive, within
220 either the current or preceding calendar year, regardless of
221 whether they were employed at the same moment of time;

222 (11) Service of an individual who is a citizen of the United
223 States, performed outside the United States after December
224 thirty-one, one thousand nine hundred seventy-one (except in

225 Canada and in the case of Virgin Islands after December
226 thirty-one, one thousand nine hundred seventy-one, and before
227 January one of the year following the year in which the sec-
228 retary of labor approves for the first time an unemployment
229 insurance law submitted to him by the Virgin Islands for
230 approval) in the employ of an American employer (other than
231 service which is deemed "employment" under the provisions
232 of subdivisions (4), (5) or (6) of this definition of "employ-
233 ment" or the parallel provisions of another state's law) if:

234 (a) The employer's principal place of business in the United
235 States is located in this state; or

236 (b) The employer has no place of business in the United
237 States, but (i) the employer is an individual who is a resident
238 of this state; or (ii) the employer is a corporation which is
239 organized under the laws of this state; or (iii) the employer is
240 a partnership or a trust and the number of the partners or
241 trustees who are residents of this state is greater than the
242 number who are residents of any one other state; or

243 (c) None of the criteria of subparagraphs (a) and (b) of
244 this subdivision (11) is met but the employer has elected cov-
245 erage in this state or, the employer having failed to elect cov-
246 erage in any state, the individual has filed a claim for benefits,
247 based on such service, under the law of this state.

248 An "American employer," for purposes of this subdivision
249 (11), means a person who is (i) an individual who is a resident
250 of the United States; or (ii) a partnership if two thirds or more
251 of the partners are residents of the United States; or (iii) a
252 trust, if all of the trustees are residents of the United States; or
253 (iv) a corporation organized under the laws of the United
254 States or of any state;

255 (12) Service performed after December thirty-one, one
256 thousand nine hundred seventy-seven, by an individual in
257 agricultural labor as defined in subdivision (5) of the exclu-
258 sions from employment in this section when:

259 (a) Such service is performed for a person who (i) during
260 any calendar quarter in either the current or the preceding
261 calendar year paid remuneration in cash of twenty thousand

262 dollars or more to individuals employed in agricultural labor
263 [not taking into account service in agricultural labor per-
264 formed before January one, one thousand nine hundred eighty,
265 by an alien referred to in subparagraph (b) of this subdivision
266 (12)], or (ii) for some portion of a day in each of twenty dif-
267 ferent calendar weeks, whether or not such weeks were con-
268 secutive, in either the current or the preceding calendar year,
269 employed in agricultural labor (not taking into account ser-
270 vice in agricultural labor performed before January one, one
271 thousand nine hundred eighty, by an alien referred to in di-
272 vision (ii) of this subparagraph) ten or more individuals, re-
273 gardless of whether they were employed at the same moment
274 of time;

275 (b) Such service is not performed in agricultural labor if
276 performed before January one, one thousand nine hundred
277 eighty, by an individual who is an alien admitted to the
278 United States to perform service in agricultural labor pursuant
279 to sections 214 (c) and 101 (a) (15) (H) of the Immigration
280 and Nationality Act;

281 (c) For the purposes of the definition of employment, any
282 individual who is a member of a crew furnished by a crew
283 leader to perform service in agricultural labor for any other
284 person shall be treated as an employee of such crew leader (i)
285 if such crew leader holds a valid certificate of registration
286 under the Farm Labor Contractor Registration Act of 1963; or
287 substantially all the members of such crew operate or maintain
288 tractors, mechanized harvesting or crop-dusting equipment, or
289 any other mechanized equipment, which is provided by such
290 crew leader; and (ii) if such individual is not an employee
291 of such other person within the meaning of subdivision (7)
292 of the definition of employer;

293 (d) For the purposes of this subdivision (12), in the case
294 of any individual who is furnished by a crew leader to perform
295 service in agricultural labor for any other person and who is
296 not treated as an employee of such crew leader under sub-
297 paragraph (c) of this subdivision (12), (i) such other person
298 and not the crew leader shall be treated as the employer of
299 such individual; and (ii) such other person shall be treated as
300 having paid cash remuneration to such individual in an amount

301 equal to the amount of cash remuneration paid to such indi-
302 vidual by the crew leader (either on his own behalf or on be-
303 half of such other person) for the service in agricultural labor
304 performed for such other person;

305 (e) For the purposes of this subdivision (12), the term
306 "crew leader" means an individual who (i) furnishes individuals
307 to perform service in agricultural labor for any other person,
308 (ii) pays (either on his own behalf or on behalf of such other
309 person) the individuals so furnished by him for the service in
310 agricultural labor performed by them, and (iii) has not entered
311 into a written agreement with such other person under which
312 such individual is designated as an employee of such other
313 person;

314 (13) The term "employment" shall include domestic service
315 after December thirty-one, one thousand nine hundred seventy-
316 seven, in a private home, local college club or local chapter
317 of a college fraternity or sorority performed for a person who
318 paid cash remuneration of one thousand dollars or more after
319 December thirty-one, one thousand nine hundred seventy-
320 seven, in any calendar quarter in the current calendar year or
321 the preceding calendar year to individuals employed in such
322 domestic service.

323 Notwithstanding the foregoing definition of "employment,"
324 if the services performed during one half or more of any pay
325 period by an employee for the person employing him consti-
326 tute employment, all the services of such employee for such
327 period shall be deemed to be employment; but if the services
328 performed during more than one half of any such pay period
329 by an employee for the person employing him do not constitute
330 employment, then none of the services of such employee for
331 such period shall be deemed to be employment.

332 The term "employment" shall not include:

333 (1) Service performed in the employ of this state or any
334 political subdivision thereof, or any instrumentality of this
335 state or its subdivisions, except as otherwise provided herein
336 until December thirty-one, one thousand nine hundred seventy-
337 seven;

338 (2) Service performed directly in the employ of another
339 state, or its political subdivisions, except as otherwise provided
340 in subdivision (9) (a) of the definition of "employment," until
341 December thirty-one, one thousand nine hundred seventy-
342 seven;

343 (3) Service performed in the employ of the United States
344 or an instrumentality of the United States exempt under the
345 constitution of the United States from the payments imposed
346 by this law, except that to the extent that the Congress of the
347 United States shall permit states to require any instrumentalities
348 of the United States to make payments into an unemployment
349 fund under a state unemployment compensation law, all
350 of the provisions of this law shall be applicable to such in-
351 strumentalities, and to service performed for such instrumen-
352 talities, in the same manner, to the same extent and on the
353 same terms as to all other employers, employing units, indi-
354 viduals and services: *Provided*, That if this state shall not be
355 certified for any year by the secretary of labor under section
356 1603(c) of the Federal Internal Revenue Code, the payments
357 required of such instrumentalities with respect to such year
358 shall be refunded by the commissioner from the fund in the
359 same manner and within the same period as is provided in
360 section nineteen, article five of this chapter, with respect to
361 payments erroneously collected;

362 (4) Service performed after June thirty, one thousand nine
363 hundred thirty-nine, with respect to which unemployment
364 compensation is payable under the Railroad Unemployment
365 Insurance Act and service with respect to which unemployment
366 benefits are payable under an unemployment compensation
367 system for maritime employees established by an act of Con-
368 gress. The commissioner may enter into agreements with the
369 proper agency established under such an act of Congress to
370 provide reciprocal treatment to individuals who, after ac-
371 quiring potential rights to unemployment compensation under
372 an act of Congress, or who have, after acquiring potential
373 rights to unemployment compensation under an act of Con-
374 gress, acquired rights to benefit under this chapter. Such
375 agreement shall become effective ten days after such publi-
376 cations as comply with the general rules of the department;

377 (5) Service performed by an individual in agricultural labor,
378 except as provided in subdivision (12) of the definition of
379 "employment" in this section. For purposes of this subdivi-
380 sion (5), the term "agricultural labor" includes all services
381 performed:

382 (a) On a farm, in the employ of any person, in connection
383 with cultivating the soil, or in connection with raising or har-
384 vesting any agricultural or horticultural commodity, including
385 the raising, shearing, feeding, caring for, training and man-
386 agement of livestock, bees, poultry, and fur-bearing animals
387 and wildlife;

388 (b) In the employ of the owner or tenant or other operator
389 of a farm, in connection with the operation, management,
390 conservation, improvement or maintenance of such farm and
391 its tools and equipment, or in salvaging timber or clearing
392 land of brush and other debris left by a hurricane, if the major
393 part of such service is performed on a farm;

394 (c) In connection with the production or harvesting of any
395 commodity defined as an agricultural commodity in section
396 15(g) of the Agricultural Marketing Act, as amended, or in
397 connection with the ginning of cotton, or in connection with
398 the operation or maintenance of ditches, canals, reservoirs or
399 waterways, not owned or operated for profit, used exclusively
400 for supplying and storing water for farming purposes;

401 (d) (i) In the employ of the operator of a farm in handling,
402 planting, drying, packing, packaging, processing, freezing,
403 grading, storing or delivering to storage or to market or to a
404 carrier for transportation to market, in its unmanufactured
405 state, any agricultural or horticultural commodity; but only
406 if such operator produced more than one half of the com-
407 modity with respect to which such service is performed; or
408 (ii) in the employ of a group of operators of farms (or a co-
409 operative organization of which such operators are members)
410 in the performance of service described in subparagraph (i),
411 but only if such operators produced more than one half of
412 the commodity with respect to which such service is per-
413 formed; but the provisions of subparagraphs (i) and (ii) shall
414 not be deemed to be applicable with respect to service per-

415 formed in connection with commercial canning or commercial
416 freezing or in connection with any agricultural or horticultural
417 commodity after its delivery to a terminal market for
418 distribution for consumption;

419 (e) On a farm operated for profit if such service is not in
420 the course of the employer's trade or business or is domestic
421 service in a private home of the employer. As used in this
422 subdivision (5), the term "farm" includes stock, dairy, poultry,
423 fruit, fur-bearing animal, and truck farms, plantations, ranches,
424 greenhouses, ranges and nurseries, or other similar land areas
425 or structures used primarily for the raising of any agricultural
426 or horticultural commodities;

427 (6) Domestic service in a private home, except as provided
428 in subdivision (13) of the definition of "employment" in this
429 section;

430 (7) Service performed by an individual in the employ of
431 his son, daughter or spouse;

432 (8) Service performed by a child under the age of eighteen
433 years in the employ of his father or mother;

434 (9) Service as an officer or member of a crew of an American
435 vessel, performed on or in connection with such vessel, if
436 the operating office, from which the operations of the vessel
437 operating on navigable water within or without the United
438 States are ordinarily and regularly supervised, managed, directed
439 and controlled, is without this state;

440 (10) Service performed by agents of mutual fund broker-
441 dealers or insurance companies, exclusive of industrial insurance
442 agents, or by agents of investment companies, who are
443 compensated wholly on a commission basis;

444 (11) Service performed (i) in the employ of a church or
445 convention or association of churches, or an organization
446 which is operated primarily for religious purposes and which
447 is operated, supervised, controlled or principally supported
448 by a church or convention or association of churches; or (ii)
449 by a duly ordained, commissioned or licensed minister of a
450 church in the exercise of his ministry or by a member of a

451 religious order in the exercise of duties required by such
452 order; or (iii) prior to January one, one thousand nine hun-
453 dred seventy-eight, in the employ of a school which is not an
454 institution of higher education; or (iv) in a facility conducted
455 for the purpose of carrying out a program of rehabilitation for
456 individuals whose earning capacity is impaired by age or phys-
457 ical or mental deficiency or injury or providing remunerative
458 work for individuals who because of their impaired physical
459 or mental capacity cannot be readily absorbed in the competi-
460 tive labor market by an individual receiving such rehabilitation
461 or remunerative work; or (v) as part of an unemployment
462 work-relief or work-training program assisted or financed in
463 whole or in part by any federal agency or an agency of a state
464 or political subdivision thereof, by an individual receiving such
465 work relief or work training; or (vi) prior to January one, one
466 thousand nine hundred seventy-eight, for a hospital in a state
467 prison or other state correctional institution by an inmate of
468 the prison or correctional institution, and after December
469 thirty-one, one thousand nine hundred seventy-seven, by an
470 inmate of a custodial or penal institution;

471 (12) Service performed in the employ of a school, college
472 or university, if such service is performed (i) by a student who
473 is enrolled and is regularly attending classes at such school,
474 college or university, or (ii) by the spouse of such a student,
475 if such spouse is advised, at the time such spouse commences
476 to perform such service, that (I) the employment of such
477 spouse to perform such service is provided under a program to
478 provide financial assistance to such student by such school,
479 college or university, and (II) such employment will not be
480 covered by any program of unemployment insurance;

481 (13) Service performed by an individual under the age of
482 twenty-two who is enrolled at a nonprofit or public educa-
483 tional institution which normally maintains a regular faculty
484 and curriculum and normally has a regularly organized body of
485 students in attendance at the place where its educational activ-
486 ities are carried on as a student in a full-time program, taken
487 for credit at such institution, which combines academic instruc-
488 tion with work experience, if such service is an integral part
489 of such program, and such institution has so certified to the

490 employer, except that this subdivision shall not apply to
491 service performed in a program established for or on behalf
492 of an employer or group of employers;

493 (14) Service performed in the employ of a hospital, if such
494 service is performed by a patient of the hospital, as defined in
495 this section;

496 (15) Service in the employ of a governmental entity re-
497 ferred to in subdivision (9) of the definition of "employment"
498 in this section if such service is performed by an individual in
499 the exercise of duties (i) as an elected official; (ii) as a member
500 of a legislative body, or a member of the judiciary, of a state
501 or political subdivision; (iii) as a member of the state national
502 guard or air national guard; (iv) as an employee serving on a
503 temporary basis in case of fire, storm, snow, earthquake, flood
504 or similar emergency; (v) in a position which, under or pur-
505 suant to the laws of this state, is designated as (I) a major
506 nontenured policy-making or advisory position, or (II) a policy-
507 making or advisory position the performance of the duties of
508 which ordinarily does not require more than eight hours per
509 week.

510 Notwithstanding the foregoing exclusions from the defini-
511 tion of "employment," services, except agricultural labor and
512 domestic service in a private home, shall be deemed to be in
513 employment if with respect to such services a tax is required
514 to be paid under any federal law imposing a tax against which
515 credit may be taken for contributions required to be paid into
516 a state unemployment compensation fund, or which as a
517 condition for full tax credit against the tax imposed by the
518 Federal Unemployment Tax Act are required to be covered
519 under this chapter.

520 "Employment office" means a free employment office or
521 branch thereof, operated by this state, or any free public
522 employment office maintained as a part of a state controlled
523 system of public employment offices in any other state.

524 "Fund" means the unemployment compensation fund es-
525 tablished by this chapter.

526 "Hospital" means an institution which has been licensed,

527 certified or approved by the state department of health as a
528 hospital.

529 "Institution of higher education" means an educational
530 institution which:

531 (1) Admits as regular students only individuals having a
532 certificate of graduation from a high school, or the recognized
533 equivalent of such a certificate;

534 (2) Is legally authorized in this state to provide a program
535 of education beyond high school;

536 (3) Provides an educational program for which it awards
537 a bachelor's or higher degree, or provides a program which
538 is acceptable for full credit toward such a degree, or provides
539 a program of post-graduate or post-doctoral studies, or pro-
540 vides a program of training to prepare students for gainful
541 employment in a recognized occupation; and

542 (4) Is a public or other nonprofit institution.

543 Notwithstanding any of the foregoing provisions of this
544 definition, all colleges and universities in this state are institu-
545 tions of higher education for purposes of this section.

546 "Payments" means the money required to be paid or that
547 may be voluntarily paid into the state unemployment com-
548 pensation fund as provided in article five of this chapter.

549 "Separated from employment" means, for the purposes of
550 this chapter, the total severance, whether by quitting, dis-
551 charge or otherwise, of the employer-employee relationship.

552 "State" includes, in addition to the states of the United
553 States, Puerto Rico, District of Columbia and the Virgin
554 Islands.

555 "Total and partial unemployment" means:

556 (1) An individual shall be deemed totally unemployed in
557 any week in which such individual is separated from employ-
558 ment for an employing unit and during which he performs no
559 services and with respect to which no wages are payable to
560 him.

561 (2) An individual who has not been separated from em-
562 ployment shall be deemed to be partially unemployed in any
563 week in which due to lack of work he performs no services
564 and with respect to which no wages are payable to him, or in
565 any week in which due to lack of full-time work wages pay-
566 able to him are less than his weekly benefit amount plus
567 twenty-five dollars.

568 "Wages" means all remuneration for personal service, in-
569 cluding commissions and bonuses and the cash value of all
570 remuneration in any medium other than cash except for
571 agricultural labor and domestic service: *Provided*, That the
572 term "wages" shall not include:

573 (1) That part of the remuneration which, after remuneration
574 equal to three thousand dollars has been paid to an individual
575 by an employer with respect to employment during any calen-
576 dar year, is paid after December thirty-one, one thousand nine
577 hundred thirty-nine, and prior to January one, one thousand
578 nine hundred forty-seven, to such individual by such employer
579 with respect to employment during such calendar year; or that
580 part of the remuneration which, after remuneration equal to
581 three thousand dollars with respect to employment after one
582 thousand nine hundred thirty-eight, has been paid to an indi-
583 vidual by an employer during any calendar year after one
584 thousand nine hundred forty-six, is paid to such individual
585 by such employer during such calendar year, except that for
586 the purposes of sections one, ten, eleven and thirteen, article
587 six of this chapter, all remuneration earned by an individual
588 in employment shall be credited to the individual and included
589 in his computation of base period wages: *Provided*, That not-
590 withstanding the foregoing provisions, on and after January
591 one, one thousand nine hundred sixty-two, the term "wages"
592 shall not include:

593 That part of the remuneration which, after remuneration
594 equal to three thousand six hundred dollars has been paid to
595 an individual by an employer with respect to employment
596 during any calendar year, is paid during any calendar year
597 after one thousand nine hundred sixty-one; and shall not in-
598 clude that part of remuneration which, after remuneration
599 equal to four thousand two hundred dollars is paid during a

600 calendar year after one thousand nine hundred seventy-one;
601 and shall not include that part of remuneration which, after
602 remuneration equal to six thousand dollars is paid during a
603 calendar year after one thousand nine hundred seventy-seven,
604 to an individual by an employer or his predecessor with re-
605 spect to employment during any calendar year, is paid to such
606 individual by such employer during such calendar year unless
607 that part of the remuneration is subject to a tax under a federal
608 law imposing a tax against which credit may be taken for
609 contributions required to be paid into a state unemployment
610 fund. For the purposes of this subdivision (1), the term "em-
611 ployment" shall include service constituting employment under
612 any unemployment compensation law of another state; or
613 which as a condition for full tax credit against the tax im-
614 posed by the Federal Unemployment Tax Act is required to
615 be covered under this chapter; and, except, that for the pur-
616 poses of sections one, ten, eleven and thirteen, article six of
617 this chapter, all remuneration earned by an individual in
618 employment shall be credited to the individual and included
619 in his computation of base period wages: *Provided*, That the
620 remuneration paid to an individual by an employer with re-
621 spect to employment in another state or other states upon
622 which contributions were required of and paid by such em-
623 ployer under an unemployment compensation law of such
624 other state or states shall be included as a part of the remuner-
625 ation equal to the amounts of three thousand six hundred dol-
626 lars or four thousand two hundred dollars or six thousand dol-
627 lars herein referred to. In applying such limitation on the
628 amount of remuneration that is taxable, an employer shall be
629 accorded the benefit of all or any portion of such amount
630 which may have been paid by its predecessor or predecessors:
631 *Provided, however*, That if the definition of the term "wages"
632 as contained in section 3306(b) of the Internal Revenue Code
633 of 1954 as amended: (a) effective prior to January one, one
634 thousand nine hundred sixty-two, to include remuneration in
635 excess of three thousand dollars, or (b) effective on or after
636 January one, one thousand nine hundred sixty-two, to include
637 remuneration in excess of three thousand six hundred dol-
638 lars, or effective on or after January one, one thousand nine
639 hundred seventy-two, to include remuneration in excess of

640 four thousand two hundred dollars, or effective on or after
641 January one, one thousand nine hundred seventy-eight, to
642 include remuneration in excess of six thousand dollars, paid
643 to an individual by an employer under the Federal Unem-
644 ployment Tax Act during any calendar year, wages for the
645 purposes of this definition shall include remuneration paid in
646 a calendar year to an individual by an employer subject to
647 this article or his predecessor with respect to employment dur-
648 ing any calendar year up to an amount equal to the amount of
649 remuneration taxable under the Federal Unemployment Tax
650 Act;

651 (2) The amount of any payment made after December
652 thirty-one, one thousand nine hundred fifty-two (including any
653 amount paid by an employer for insurance or annuities, or into
654 a fund, to provide for any such payment), to, or on behalf of,
655 an individual in its employ or any of his dependents, under a
656 plan or system established by an employer which makes pro-
657 vision for individuals in its employ generally (or for such
658 individuals and their dependents), or for a class or classes of
659 such individuals (or for a class or classes of such individuals
660 and their dependents), on account of (A) retirement, or (B)
661 sickness or accident disability, or (C) medical or hospitaliza-
662 tion expenses in connection with sickness or accident disability,
663 or (D) death;

664 (3) Any payment made after December thirty-one, one
665 thousand nine hundred fifty-two, by an employer to an indi-
666 vidual in its employ (including any amount paid by an em-
667 ployer for insurance or annuities, or into a fund, to provide
668 for any such payment) on account of retirement;

669 (4) Any payment made after December thirty-one, one
670 thousand nine hundred fifty-two, by an employer on account
671 of sickness or accident disability, or medical or hospitalization
672 expenses in connection with sickness or accident disability, to,
673 or on behalf of, an individual in its employ after the expiration
674 of six calendar months following the last calendar month in
675 which such individual worked for such employer;

676 (5) Any payment made after December thirty-one, one
677 thousand nine hundred fifty-two, by an employer to, or on

678 behalf of, an individual in its employ or his beneficiary (A)
679 from or to a trust described in section 401(a) which is exempt
680 from tax under section 501(a) of the Federal Internal Revenue
681 Code at the time of such payments unless such payment is
682 made to such individual as an employee of the trust as remun-
683 eration for services rendered by such individual and not as a
684 beneficiary of the trust, or (B) under or to an annuity plan
685 which, at the time of such payment, is a plan described in
686 section 403(a) of the Federal Internal Revenue Code;

687 (6) The payment by an employer (without deduction from
688 the remuneration of the individual in its employ) of the tax
689 imposed upon an individual in its employ under section 3101
690 of the Federal Internal Revenue Code;

691 (7) Remuneration paid by an employer after December
692 thirty-one, one thousand nine hundred fifty-two, in any medi-
693 um other than cash to an individual in its employ for service
694 not in the course of the employer's trade or business;

695 (8) Any payment (other than vacation or sick pay) made
696 by an employer after December thirty-one, one thousand nine
697 hundred fifty-two, to an individual in its employ after the
698 month in which he attains the age of sixty-five, if he did
699 not work for the employer in the period for which such pay-
700 ment is made;

701 (9) Payments, not required under any contract of hire,
702 made to an individual with respect to his period of training
703 or service in the armed forces of the United States by an em-
704 ployer by which such individual was formerly employed;

705 (10) Vacation pay, severance pay, or savings plans re-
706 ceived by an individual before or after becoming totally or
707 partially unemployed but earned prior to becoming totally or
708 partially unemployed: *Provided, however,* That the term
709 totally or partially unemployed shall not be interpreted to
710 include employees who are on vacation by reason of
711 the request of the employees or their duly authorized agent,
712 for a vacation at a specific time, and which request by the
713 employees or their agent is acceded to by their employer.

714 Gratuities customarily received by an individual in the

715 course of his employment from persons other than his em-
716 ploying unit shall be treated as wages paid by his employing
717 unit, if accounted for and reported to such employing unit.

718 The reasonable cash value of remuneration in any medium
719 other than cash shall be estimated and determined in accor-
720 dance with rules prescribed by the commissioner, except for
721 remuneration other than cash for services performed in agri-
722 cultural labor and domestic service.

723 "Week" means a calendar week, ending at midnight Satur-
724 day, or the equivalent thereof, as determined in accordance
725 with the regulations prescribed by the commissioner.

726 "Weekly benefit rate" means the maximum amount of bene-
727 fit an eligible individual will receive for one week of total
728 unemployment.

729 "Year" means a calendar year or the equivalent thereof, as
730 determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-3b. Financing benefits paid to employees of governmental entities;
liability of governmental entities for payments.

§21A-5-3c. Designating method of financing.

§21A-5-5. Rate of contribution.

§21A-5-7. Joint and separate accounts.

§21A-5-20. Qualifying wages for regular benefits of newly covered workers
during transition period on the basis of previously uncovered
services.

§21A-5-3b. Financing benefits paid to employees of governmental entities; liability of governmental entities for pay- ments.

1 Benefits paid to employees of governmental entities re-
2 ferred to in subdivision (9) (b) of the definition of "employ-
3 ment" in section three, article one of this chapter, shall be
4 financed in the same manner and in accordance with the
5 provisions of section three-a, article five of this chapter;
6 except that for extended benefits reimbursement shall be one
7 hundred percent of the benefits paid.

8 Any governmental entity which, pursuant to the provisions
9 of this chapter, is, or becomes, subject to this chapter on or
10 after January one, one thousand nine hundred seventy-eight,

11 shall be liable for payments and shall pay contributions in
12 accordance with the provisions of this article and of this
13 chapter, unless it elects to make payments in lieu of contribu-
14 tions as set forth in section three-a, such payments to com-
15 mence on or before January one, one thousand nine hundred
16 seventy-nine.

17 Governmental entities electing to make payments in lieu
18 of contributions shall be liable for the full amount of ex-
19 tended benefits paid for weeks of unemployment beginning
20 after December thirty-one, one thousand nine hundred seventy-
21 eight.

§21A-5-3c. Designating method of financing.

1 The governor or any person or persons he may designate
2 shall elect whether to finance unemployment compensation
3 for the employees of this state or any of its agencies, bureaus,
4 commissions, departments or other instrumentalities by choos-
5 ing the contribution method or the reimbursement method.
6 Nothing in this chapter shall be construed to require the state
7 or any of its agencies, bureaus, commissions, departments or
8 other instrumentalities to choose the same method of financing.

9 The county commission for each county or any of its agen-
10 cies, bureaus, commissions, departments or other instrumentali-
11 ties or the governing body for a municipality or any of its
12 agencies, bureaus, commissions, departments or other instru-
13 mentalities shall elect whether to finance unemployment com-
14 pensation liabilities by choosing the contribution method or the
15 reimbursement method.

§21A-5-5. Rate of contribution.

1 On and after January first, one thousand nine hundred forty-
2 one, an employer shall make payments to the unemployment
3 compensation fund equal to two and seven-tenths percent of
4 wages paid by him with respect to employment during each
5 calendar year beginning with the calendar year one thousand
6 nine hundred forty-one, subject, however, to other provisions
7 of this article; except that on and after January first, one
8 thousand nine hundred seventy-two, each employer subject to
9 this chapter shall pay contributions at the rate of one and

10 five-tenths percent of wages paid by him with respect to em-
11 ployment during each calendar year until he has been an
12 employer for not less than thirty-six consecutive months
13 ending on the computation date; thereafter, his contribution
14 rate shall be determined in accordance with the provisions of
15 section ten of this article.

16 Notwithstanding any other provision of this chapter to the
17 contrary, on or after the first day of July, one thousand nine
18 hundred seventy-eight, any foreign corporation or business
19 entity engaged in the construction trades shall pay contributions
20 at the rate of two and seven-tenths percent of wages paid by
21 him with respect to employment during each calendar year.

§21A-5-7. Joint and separate accounts.

1 (1) The commissioner shall maintain a separate account
2 for each employer, and shall credit his account with all
3 contributions paid by him prior to July first, one thousand
4 nine hundred sixty-one. On and after July first, one
5 thousand nine hundred sixty-one, the commissioner shall
6 maintain a separate account for each employer, and shall
7 credit said employer's account with all contributions of
8 such employer in excess of seven tenths of one percent of
9 taxable wages; and on and after July first, one thousand
10 nine hundred seventy-one, the commissioner shall maintain a
11 separate account for each employer, and shall credit said
12 employer's account with all contributions of such employer
13 in excess of four tenths of one percent of taxable wages:
14 *Provided*, That any adjustment made in an employer's account
15 after the computation date shall not be used in the com-
16 putation of the balance of an employer until the next fol-
17 lowing computation date: *Provided, however*, That nothing
18 in this chapter shall be construed to grant an employer or
19 individual in his service prior claims or rights to the amounts
20 paid by him into the fund, either on his behalf or on behalf
21 of such individuals. The account of any employer which has
22 been inactive for a period of four consecutive calendar years
23 shall be terminated for all purposes.

24 (2) Benefits paid to an eligible individual for regular
25 and extended total unemployment beginning after the effective

26 date of this article shall be charged to the account of the last
27 employer with whom he has been employed as much as
28 thirty working days, whether or not such days are consecu-
29 tive: *Provided further*, That no employer's account shall be
30 charged with benefits paid to any individual who has been
31 separated from a noncovered employing unit in which he
32 was employed as much as thirty days, whether or not such
33 days are consecutive: *And provided further*, That benefits
34 paid to an eligible individual for regular and extended partial
35 unemployment beginning after the effective date of this act
36 shall be charged to the account of the claimant's current
37 employer: *Provided*, That no employer's account shall be
38 charged with more than fifty percent of the benefits paid
39 to an eligible individual as extended benefits under the
40 provisions of article six-a of this chapter: *Provided, however*,
41 That state and local government employers shall be charged
42 with one hundred percent of the benefits paid to an eligible
43 individual as extended benefits.

44 (3) The commissioner shall, for each calendar year here-
45 after, classify employers in accordance with their actual
46 experience in the payment of contributions on their own
47 behalf and with respect to benefits charged against their
48 accounts, with a view of fixing such contribution rates as
49 will reflect such experiences. For the purpose of fixing such
50 contribution rates for each calendar year, the books of
51 the department shall be closed on July thirty-one of the
52 preceding calendar year, and any contributions thereafter
53 paid, as well as benefits thereafter paid with respect to
54 compensable weeks ending on or before June thirty of the
55 preceding calendar year, shall not be taken into account
56 until the next annual date for fixing contribution rates:
57 *Provided, however*, That if an employer has failed to furnish
58 to the commissioner on or before July thirty-one of such
59 preceding calendar year the wage information for all past
60 periods necessary for the computation of the contribution
61 rate, such employer's rate shall be, if it is immediately prior
62 to such July thirty-one, less than three and three-tenths per-
63 cent, increased to three and three-tenths percent: *Provided*
64 *further*, That any payment made or any information necessary
65 for the computation of a reduced rate furnished on or before

66 the termination of an extension of time for such payment or
67 reporting of such information granted pursuant to a regulation
68 of the commissioner authorizing such extension, shall be taken
69 into account for the purposes of fixing contribution rates:
70 *And provided further*, That when the time for filing any report
71 or making any payment required hereunder falls on Saturday,
72 Sunday, or a legal holiday, the due date shall be deemed to
73 be the next succeeding business day: *Provided*, That when-
74 ever, through mistake or inadvertence, erroneous credits or
75 charges are found to have been made to or against the
76 reserved account of any employer, the rate shall be adjusted
77 as of January one of the calendar year in which such mistake
78 or inadvertence is discovered, but payments made under any
79 rate assigned prior to January one of such year shall not be
80 deemed to be erroneously collected.

81 (4) The commissioner may prescribe regulations for the
82 establishment, maintenance and dissolution of joint accounts
83 by two or more employers, and shall, in accordance with such
84 regulations and upon application by two or more employers
85 to establish such an account, or to merge their several in-
86 dividual accounts in a joint account, maintain such joint
87 account as if it constituted a single employer's account.

88 (5) State and local government employers are hereby
89 authorized to enter into joint accounts and to maintain such
90 joint account or accounts as if it or they constituted a single
91 employer's account or accounts.

**§21A-5-20. Qualifying wages for regular benefits of newly covered
workers during transition period on the basis of
previously uncovered services.**

1 With respect to weeks of unemployment beginning on or
2 after January one, one thousand nine hundred seventy-eight,
3 wages for insured work shall include wages paid for previously
4 uncovered service. For the purposes of this section, the term
5 "previously uncovered services" means services:

6 (1) Which were not employment as defined in section
7 three of article one of this chapter, or by election pursuant
8 to section three of article five of this chapter, at any time

9 during the one-year period ending December thirty-one, one
10 thousand nine hundred seventy-five; and

11 (2) Which (a) Are agricultural labor, as defined in sub-
12 division (12) of the definitions of "employment" in section
13 three of article one of this chapter, or domestic services as
14 defined in subdivision (13) of the definitions of "employment"
15 in section three, or (b) are services performed by an employee
16 of this state or a political subdivision thereof, or a nonprofit
17 educational institution as provided in subparagraphs (b) and
18 (c) of subdivision (9) of the definitions of "employment" in
19 section three of article one; except to the extent that assistance
20 under Title II of the Emergency Jobs and Unemployment
21 Assistance Act of 1974 was paid on the basis of such services.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he left his most recent work
4 voluntarily without good cause involving fault on the part
5 of the employer and the six weeks immediately following such
6 week. Such disqualification shall carry a reduction in the
7 maximum benefit amount equal to six times the individual's
8 weekly benefit rate. However, if the claimant returns to work
9 in covered employment during his benefit year, the maximum
10 benefit amount shall be increased by the amount of decrease
11 imposed under the disqualification. For the purpose of this
12 subdivision, the term "work" means employment with the
13 last employing unit with whom such individual was employed
14 as much as thirty days, whether or not such days are con-
15 secutive.

16 For purposes of this subdivision (1), an individual shall
17 not be deemed to have left his most recent work voluntarily

18 without good cause involving fault on the part of the em-
19 ployer, if such individual leaves his work with an employer
20 with whom he has been employed at least thirty working days
21 or more for the purpose of returning to, and if he in fact,
22 within a fourteen-day calendar period, does return to, em-
23 ployment with the last preceding employer with whom he
24 was previously employed within the past year prior to his
25 return to work day, and which last preceding employer, after
26 having previously employed such individual for thirty working
27 days or more, laid off such individual because of lack of
28 work, which layoff occasioned the payment of benefits under
29 this chapter or could have occasioned the payment of benefits
30 under this chapter had such individual applied for such bene-
31 fits. It is the intent of this paragraph to cause no disqualifica-
32 tion for benefits for such an individual who complies with the
33 foregoing set of requirements and conditions. Benefits paid
34 to such individual under the provisions of this chapter shall,
35 notwithstanding the provisions of subsection (2), section seven,
36 article five of this chapter, and of subdivision (12) of this
37 section three, be charged to the account of such last preceding
38 employer with whom such individual was previously em-
39 ployed for thirty working days.

40 (2) For the week in which he was discharged from his
41 most recent work for misconduct and the six weeks im-
42 mediately following such week; or for the week in which he
43 was discharged from his last thirty-day employing unit for
44 misconduct and the six weeks immediately following such
45 week. Such disqualification shall carry a reduction in the
46 maximum benefit amount equal to six times the individual's
47 weekly benefit. However, if the claimant returns to work in
48 covered employment for thirty days during his benefit year,
49 whether or not such days are consecutive, the maximum
50 benefit amount shall be increased by the amount of the
51 decrease imposed under the disqualification; except that:

52 If he were discharged from his most recent work for one
53 of the following reasons; or if he were discharged from his
54 last thirty-day employing unit for one of the following
55 reasons: Misconduct consisting of willful destruction of his
56 employer's property, assault upon the person of his employer

57 or any employee of his employer, if such assault is com-
58 mitted at such individual's place of employment or in the
59 course of employment; reporting to work in an intoxicated
60 condition, or being intoxicated while at work; arson, theft,
61 larceny, fraud or embezzlement in connection with his work;
62 or any other gross misconduct; he shall be and remain dis-
63 qualified for benefits until he has thereafter worked for at
64 least thirty days in covered employment.

65 (3) For the week in which he failed without good cause to
66 apply for available, suitable work, accept suitable work
67 when offered, or return to his customary self-employment
68 when directed to do so by the commissioner, and for the four
69 weeks which immediately follow for such an additional period
70 as any offer of suitable work shall continue open for his
71 acceptance.

72 (4) For a week in which his total or partial unemployment
73 is due to a stoppage of work which exists because of a labor
74 dispute at the factory, establishment or other premises at
75 which he was last employed, unless the commissioner is
76 satisfied that he was not (one) participating, financing, or
77 directly interested in such dispute, and (two) did not belong
78 to a grade or class of workers who were participating, financ-
79 ing, or directly interested in the labor dispute which resulted
80 in the stoppage of work. No disqualification under this
81 subdivision shall be imposed if the employees are required
82 to accept wages, hours or conditions of employment sub-
83 stantially less favorable than those prevailing for similar work
84 in the locality, or if employees are denied the right of
85 collective bargaining under generally prevailing conditions, or
86 if an employer shuts down his plant or operation or dismisses
87 his employees in order to force wage reduction, changes in
88 hours or working conditions.

89 For the purpose of this subdivision, if any stoppage of
90 work continues longer than four weeks after the termination of
91 the labor dispute which caused stoppage of work, there shall be
92 a rebuttable presumption that that part of the stoppage of work
93 which exists after said period of four weeks after the termina-
94 tion of said labor dispute did not exist because of said labor

95 dispute; and in such event the burden shall be upon the em-
96 ployer or other interested party to show otherwise.

97 (5) For a week with respect to which he is receiving or
98 has received:

99 (a) Wages in lieu of notice;

100 (b) Compensation for temporary total disability under
101 the workmen's compensation law of any state or under a
102 similar law of the United States;

103 (c) Unemployment compensation benefits under the laws
104 of the United States or any other state.

105 (6) For the week in which an individual has voluntarily
106 quit employment to marry or to perform any marital, parental,
107 or family duty, or to attend to his or her personal business
108 or affairs and until the individual returns to covered em-
109 ployment and has been employed in covered employment at
110 least thirty working days.

111 (7) Benefits shall not be paid to any individual on the
112 basis of any services, substantially all of which consist of
113 participating in sports or athletic events or training or pre-
114 paring to so participate, for any week which commences
115 during the period between two successive sport seasons (or
116 similar periods) if such individual performed such services
117 in the first of such seasons (or similar periods) and there
118 is a reasonable assurance that such individual will perform
119 such services in the later of such seasons (or similar periods).

120 (8) (a) Benefits shall not be paid on the basis of services
121 performed by an alien unless such alien is an individual
122 who has been lawfully admitted for permanent residence or
123 otherwise is permanently residing in the United States under
124 color of law (including an alien who is lawfully present in
125 the United States as a result of the application of the pro-
126 visions of section 203 (a) (7) or section 212 (d) (5) of the
127 Immigration and Nationality Act: *Provided*, That any modi-
128 fications to the provisions of section 3304 (a) (14) of the
129 Federal Unemployment Tax Act as provided by Public Law
130 94-566 which specify other conditions or other effective date
131 than stated herein for the denial of benefits based on services

132 performed by aliens and which modifications are required to
133 be implemented under state law as a condition for full tax
134 credit against the tax imposed by the Federal Unemployment
135 Tax Act shall be deemed applicable under the provisions
136 of this section;

137 (b) Any data or information required of individuals
138 applying for benefits to determine whether benefits are not
139 payable to them because of their alien status shall be uniformly
140 required from all applicants for benefits;

141 (c) In the case of an individual whose application for
142 benefits would otherwise be approved, no determination that
143 benefits to such individual are not payable because of his
144 alien status shall be made except upon a preponderance of
145 the evidence.

146 (9) For each week in which an individual is unemployed
147 because, having voluntarily left employment to attend a school,
148 college, university or other educational institution, he is at-
149 tending such school, college, university or other educational
150 institution, or is awaiting entrance thereto or is awaiting the
151 starting of a new term or session thereof, and until the
152 individual returns to covered employment.

153 (10) For each week in which he is unemployed because
154 of his request, or that of his duly authorized agent, for a
155 vacation period at a specified time that would leave the
156 employer no other alternative but to suspend operations.

157 (11) For each week in which he is receiving or has re-
158 ceived benefits under Title II of the Social Security Act
159 or similar payments under any act of Congress and/or
160 remuneration in the form of an annuity, pension, or other
161 retirement pay from an employer or from any trust or fund
162 contributed to by an employer. But if such remuneration for
163 any week is less than the benefits which would otherwise be
164 due him for such week under this chapter, he shall be
165 entitled to receive for such week, if otherwise eligible, bene-
166 fits reduced by the amount of such remuneration: *Provided*,
167 That if such amount of benefits is not a multiple of one dollar,
168 it shall be computed to the next higher multiple of one
169 dollar: *Provided, however*, That there shall be no disqualifi-

170 cation if in the individual's base period there are no wages
171 which were paid by the employer paying such remuneration,
172 or by a fund into which the employer has paid during said
173 base period. Claimant may be required to certify as to
174 whether or not he is receiving or has received remuneration
175 in the form of an annuity, pension, or other retirement pay
176 from an employer or from a trust fund contributed to by an
177 employer.

178 (12) For each week with respect to which he knowingly
179 made a false statement or representation knowing it to be
180 false or knowingly failed to disclose a material fact in order
181 to obtain or increase a benefit under this article. For each
182 week of disqualification he shall be disqualified an additional
183 five weeks and his maximum benefit amount shall be reduced
184 by an amount equal to five times his weekly benefit rate.
185 Such five weeks' disqualification periods are to run consecu-
186 tively beginning with the first week in which it is determined
187 a fraudulent claim was filed: *Provided further*, That an
188 individual shall not be disqualified under this subdivision for
189 a period of more than fifty-two consecutive weeks: *And*
190 *provided further*, That disqualification under this subdivision
191 shall not preclude prosecution under section seven, article
192 ten of this chapter.

193 (13) For the purposes of this section, an employer's ac-
194 count shall not be charged under any of the following condi-
195 tions: When benefits are paid for unemployment immediately
196 after the expiration of a period of disqualification for (a)
197 leaving work voluntarily without good cause involving fault
198 on the part of the employer, (b) discharge for any of the
199 causes set forth in subdivision (2) of this section, (c) failing
200 without good cause to apply for available suitable work, accept
201 suitable work, when offered, or to return to his customary
202 self-employment when directed to do so by the commissioner.

**§21A-6-10. Benefit rate—Total unemployment; annual computa-
tion and publication of rates.**

1 Each eligible individual who is totally unemployed in any
2 week shall be paid benefits with respect to that week at the
3 weekly rate appearing in Column (C) in Table A in this

4 paragraph, on the line on which in Column (A) there is indi-
 5 cated the employee's wage class, except as otherwise provided
 6 under the term "total and partial unemployment" in section
 7 three, article one of this chapter. The employee's wage class
 8 shall be determined by his base period wages as shown in
 9 Column (B) in Table A. The right of an employee to receive
 10 benefits shall not be prejudiced nor the amount thereof be
 11 diminished by reason of failure by an employer to pay either
 12 the wages earned by the employee or the contribution due on
 13 such wages. An individual who is totally unemployed but
 14 earns in excess of twenty-five dollars as a result of odd-job or
 15 subsidiary work in any benefit week shall be paid benefits for
 16 such week in accordance with the provisions of this chapter
 17 pertaining to benefits for partial unemployment.

18

TABLE A

19				20	21
22				23	24
25	Wage Class	Wages in Base Period	Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment	
26	(Column A)	(Column B)	(Column C)	(Column D)	
27		Under \$ 700.00	Ineligible	-----	
28	1	700.00	\$ 12.00	\$312.00	
29	2	800.00	13.00	338.00	
30	3	900.00	14.00	364.00	
31	4	1,000.00	15.00	390.00	
32	5	1,150.00	16.00	416.00	
33	6	1,300.00	17.00	442.00	
34	7	1,450.00	18.00	468.00	
35	8	1,600.00	19.00	494.00	
36	9	1,750.00	20.00	520.00	
37	10	1,900.00	21.00	546.00	
38	11	2,050.00	22.00	572.00	
39	12	2,200.00	23.00	598.00	
40	13	2,350.00	24.00	624.00	

41	14	2,500.00	2,599.99	25.00	650.00
42	15	2,600.00	2,699.99	26.00	676.00
43	16	2,700.00	2,799.99	27.00	702.00
44	17	2,800.00	2,899.99	28.00	728.00
45	18	2,900.00	2,999.99	29.00	754.00
46	19	3,000.00	3,099.99	30.00	780.00
47	20	3,100.00	3,199.99	31.00	806.00
48	21	3,200.00	3,349.99	32.00	832.00
49	22	3,350.00	3,499.99	33.00	858.00
50	23	3,500.00	3,649.99	34.00	884.00
51	24	3,650.00	3,799.99	35.00	910.00

52 Notwithstanding any of the foregoing provisions of this
 53 section, on and after July one, one thousand nine hundred
 54 sixty-seven, the maximum weekly benefit rate shall be forty
 55 percent of the average weekly wage in West Virginia.

56 Notwithstanding any of the foregoing provisions of this
 57 section, on and after July one, one thousand nine hundred
 58 seventy, the maximum weekly benefit rate shall be forty-five
 59 percent of the average weekly wage in West Virginia.

60 Notwithstanding any of the foregoing provisions of this
 61 section, on and after July one, one thousand nine hundred
 62 seventy-one, the maximum weekly benefit rate shall be fifty
 63 percent of the average weekly wage in West Virginia.

64 Notwithstanding any of the foregoing provisions of this
 65 section, on and after July one, one thousand nine hundred
 66 seventy-three, the maximum weekly benefit rate shall be fifty-
 67 five percent of the average weekly wage in West Virginia.

68 The commissioner, after he has determined the maximum
 69 weekly benefit rate upon the basis of the above formula, shall
 70 establish as many additional wage classes as are required, in-
 71 creasing the amount of base period wages required for each
 72 class by one hundred fifty dollars, the weekly benefit rate for
 73 each class by one dollar, and the maximum benefit by twenty-
 74 six dollars. The maximum weekly benefit rate, when computed
 75 by the commissioner, in accordance with the foregoing pro-
 76 visions, shall be rounded to the next higher dollar amount, if
 77 the computation exceeds forty-nine percent of a dollar amount.

78 Such rounding off to the next higher dollar amount shall result
79 in one additional wage class, with commensurate base period
80 wage requirement of one hundred fifty dollars over the pre-
81 ceding wage class, and with a maximum benefit increase over
82 the preceding wage class of twenty-six dollars. Such an addi-
83 tional wage class shall be published by the commissioner with
84 the table required to be published by the foregoing provisions
85 of this section.

86 Notwithstanding any of the foregoing provisions of this
87 section, including Table A, on and after July one, one thou-
88 sand nine hundred seventy-four:

89 (1) The maximum weekly benefit rate shall be sixty-six and
90 two-thirds percent of the average weekly wage in West Vir-
91 ginia.

92 (2) The weekly benefit rate [Column (C) of said Table A]
93 in each and every wage class, one through twenty-four, both
94 inclusive [Column (A) of said Table A], shall be increased
95 two dollars, and the maximum benefit in benefit year for total
96 and/or partial unemployment [Column (D) of said Table A]
97 in each and every wage class [Column (A) of said Table A],
98 shall be increased fifty-two dollars.

99 (3) The commissioner, after he has determined the maxi-
100 mum weekly benefit rate upon the basis of the formula set
101 forth in subdivision (1) above, shall establish as many addi-
102 tional wage classes as are required, increasing the amount of
103 the base period wages required for each wage class by one
104 hundred fifty dollars, establishing the weekly benefit rate for
105 each wage class by rounded dollar amount to be fifty percent
106 of one fifty-second of the median dollar amount of wages in
107 base period for such wage class, and establishing the maximum
108 benefit for each wage class as an amount equal to twenty-six
109 times the weekly benefit rate. The maximum weekly benefit
110 rate, when computed by the commissioner, in accordance with
111 the foregoing provisions, shall be rounded to the next higher
112 dollar amount, if the computation exceeds forty-nine percent of
113 a dollar amount. Such rounding off to the next higher dollar
114 amount shall result in one additional wage class, with com-
115 mensurate base period wage requirement of one hundred fifty

116 dollars over the preceding wage class, and with a maximum
 117 benefit increase over the preceding wage class of twenty-six
 118 dollars. Such an additional wage class shall be published by the
 119 foregoing provisions of this section.

120 Notwithstanding any of the foregoing provisions of this
 121 section, on and after July one, one thousand nine hundred
 122 seventy-eight, the weekly benefit rate for each wage class by
 123 rounded dollar amount shall be fifty-five percent of one fifty-
 124 second of the median dollar amount of wages in base period
 125 for such wage class except that the weekly benefit rate for
 126 classifications one through twenty shall remain unchanged,
 127 but in any case the weekly benefit rate on or after July one,
 128 one thousand nine hundred seventy-eight, shall be in accord-
 129 ance with Table B below.

130

TABLE B

131			132			133	Maximum
134			135			136	Benefit in
137	Wage	Wages in	138	Weekly	139	Benefit Year	for Total
	Class	Base Period	140	Benefit	141	and/or	Partial Un-
			142	Rate	143	employment	
144	Under	\$1,150.00	145	Ineligible	146		
147	1	1,150.00 - 1,299.99	148	18.00	149	468.00	
150	2	1,300.00 - 1,449.99	151	19.00	152	494.00	
153	3	1,450.00 - 1,599.99	154	20.00	155	520.00	
156	4	1,600.00 - 1,749.99	157	21.00	158	546.00	
159	5	1,750.00 - 1,899.99	160	22.00	161	572.00	
162	6	1,900.00 - 2,049.99	163	23.00	164	598.00	
165	7	2,050.00 - 2,199.99	166	24.00	167	624.00	
168	8	2,200.00 - 2,349.99	169	25.00	170	650.00	
171	9	2,350.00 - 2,499.99	172	26.00	173	676.00	
174	10	2,500.00 - 2,599.99	175	27.00	176	702.00	
177	11	2,600.00 - 2,699.99	178	28.00	179	728.00	
180	12	2,700.00 - 2,799.99	181	29.00	182	754.00	
183	13	2,800.00 - 2,899.99	184	30.00	185	780.00	
186	14	2,900.00 - 2,999.99	187	31.00	188	806.00	

153	15	3,000.00 -	3,099.99	32.00	832.00
154	16	3,100.00 -	3,199.99	33.00	858.00
155	17	3,200.00 -	3,349.99	35.00	910.00
156	18	3,350.00 -	3,499.99	37.00	962.00
157	19	3,500.00 -	3,649.99	38.00	988.00
158	20	3,650.00 -	3,799.99	40.00	1,040.00
159	21	3,800.00 -	3,949.99	41.00	1,066.00
160	22	3,950.00 -	4,099.99	43.00	1,118.00
161	23	4,100.00 -	4,249.99	45.00	1,170.00
162	24	4,250.00 -	4,399.99	46.00	1,196.00
163	25	4,400.00 -	4,549.99	48.00	1,248.00
164	26	4,550.00 -	4,699.99	49.00	1,274.00
165	27	4,700.00 -	4,849.99	51.00	1,326.00
166	28	4,850.00 -	4,999.99	53.00	1,378.00
167	29	5,000.00 -	5,149.99	54.00	1,404.00
168	30	5,150.00 -	5,299.99	56.00	1,456.00
169	31	5,300.00 -	5,449.99	57.00	1,482.00
170	32	5,450.00 -	5,599.99	59.00	1,534.00
171	33	5,600.00 -	5,749.99	61.00	1,586.00
172	34	5,750.00 -	5,899.99	62.00	1,612.00
173	35	5,900.00 -	6,049.99	64.00	1,664.00
174	36	6,050.00 -	6,199.99	65.00	1,690.00
175	37	6,200.00 -	6,349.99	67.00	1,742.00
176	38	6,350.00 -	6,499.99	68.00	1,768.00
177	39	6,500.00 -	6,649.99	70.00	1,820.00
178	40	6,650.00 -	6,799.99	72.00	1,872.00
179	41	6,800.00 -	6,949.99	73.00	1,898.00
180	42	6,950.00 -	7,099.99	75.00	1,950.00
181	43	7,100.00 -	7,249.99	76.00	1,976.00
182	44	7,250.00 -	7,399.99	78.00	2,028.00
183	45	7,400.00 -	7,549.99	80.00	2,080.00
184	46	7,550.00 -	7,699.99	81.00	2,106.00
185	47	7,700.00 -	7,849.99	83.00	2,158.00
186	48	7,850.00 -	7,999.99	84.00	2,184.00
187	49	8,000.00 -	8,149.99	86.00	2,236.00
188	50	8,150.00 -	8,299.99	87.00	2,262.00
189	51	8,300.00 -	8,449.99	89.00	2,314.00
190	52	8,450.00 -	8,599.99	91.00	2,366.00
191	53	8,600.00 -	8,749.99	92.00	2,392.00
192	54	8,750.00 -	8,899.99	94.00	2,444.00

193	55	8,900.00 -	9,049.99	95.00	2,470.00
194	56	9,050.00 -	9,199.99	97.00	2,522.00
195	57	9,200.00 -	9,349.99	99.00	2,574.00
196	58	9,350.00 -	9,499.99	100.00	2,600.00
197	59	9,500.00 -	9,649.99	102.00	2,652.00
198	60	9,650.00 -	9,799.99	103.00	2,678.00
199	61	9,800.00 -	9,949.99	105.00	2,730.00
200	62	9,950.00 -	10,099.99	107.00	2,782.00
201	63	10,100.00 -	10,249.99	108.00	2,808.00
202	64	10,250.00 -	10,399.99	110.00	2,860.00
203	65	10,400.00 -	10,549.99	111.00	2,886.00
204	66	10,550.00 -	10,699.99	113.00	2,938.00
205	67	10,700.00 -	10,849.99	114.00	2,964.00
206	68	10,850.00 -	10,999.99	116.00	3,016.00
207	69	11,000.00 -	11,149.99	118.00	2,068.00
208	70	11,150.00 -	11,299.99	119.00	3,094.00
209	71	11,300.00 -	11,449.99	121.00	3,146.00
210	72	11,450.00 -	11,599.99	122.00	3,172.00
211	73	11,600.00 -	11,749.99	124.00	3,224.00
212	74	11,750.00 -	11,899.99	126.00	3,276.00
213	75	11,900.00 -	12,049.99	127.00	3,302.00
214	76	12,050.00 -	12,199.99	129.00	3,354.00
215	77	12,200.00 -	12,349.99	130.00	3,380.00
216	78	12,350.00 -	12,499.99	132.00	3,432.00
217	79	12,500.00 -	12,649.99	133.00	3,458.00
218	80	12,650.00 -	12,799.99	135.00	3,510.00
219	81	12,800.00 -	12,949.99	137.00	3,562.00
220	82	12,950.00 -	13,099.99	138.00	3,588.00
221	83	13,150.00 -	and over	139.00	3,614.00

222 After he has established such additional wage classes, the
 223 commissioner shall prepare and publish a table setting forth
 224 such information.

225 Average weekly wage shall be computed by dividing the
 226 number of employees in West Virginia earning wages in
 227 covered employment into the total wages paid to employees
 228 in West Virginia in covered employment, and by further
 229 dividing said result by fifty-two, and shall be determined
 230 from employer wage and contribution reports for the previous
 231 calendar year which are furnished to the department on or

232 before June one following such calendar year. The average
233 weekly wage, as determined by the commissioner, shall be
234 rounded to the next higher dollar.

235 The computation and determination of rates as aforesaid
236 shall be completed annually before July one, and any such
237 new wage class, with its corresponding wages in base period,
238 weekly benefit rate, and maximum benefit in a benefit year
239 established by the commissioner in the foregoing manner
240 effective on a July one, shall apply only to a new claim
241 established by a claimant on and after said July one, and
242 shall not apply to continued claims of a claimant based on
243 his new claim established before said July one.

**§21A-6-15. Benefit payments for service with nonprofit organiza-
tions, state hospitals, institutions of higher educa-
tion, educational institutions and governmental
entities.**

1 (1) Benefits based on service in employment as defined in
2 subdivisions (9) and (10) of the definition of "employment"
3 in section three, article one of this chapter, shall be payable
4 in the same amount, on the same terms and subject to the
5 same conditions as compensation payable on the basis of
6 other service subject to this chapter; except that benefits
7 based on service in an instructional, research, or principal
8 administrative capacity in an institution of higher education
9 shall not be paid to an individual for any week of unemploy-
10 ment which begins during the period between two successive
11 academic years, or during a similar period between two
12 regular terms, whether or not successive, or during a period
13 of paid sabbatical leave provided for in the individual's
14 contract, if the individual has a contract or contracts to
15 perform services in any such capacity for any institution or
16 institutions of higher education for both such academic years
17 or both such terms.

18 (2) Benefits based on service in employment defined in
19 subdivisions (9) and (10) of the definition of "employment"
20 in section three, article one of this chapter, shall be payable
21 in the same amount, on the same terms and subject to the
22 same conditions as benefits payable on the basis of other
23 service subject to this act, except that:

24 (a) With respect to service performed after December
25 thirty-one, one thousand nine hundred seventy-seven, in an
26 instructional, research, or principal administrative capacity
27 for an educational institution, benefits shall not be paid
28 based on such services for any week of unemployment com-
29 mencing during the period between two successive academic
30 years, or during a similar period between two regular but
31 not successive terms, or during any holiday or vacation period,
32 or during a period of paid sabbatical leave provided for in
33 the individual's contract, to any individual if such individual
34 performs such services in the first of such academic years
35 (or terms) or prior to the beginning of such holiday or vaca-
36 tion period and if there is a contract or a reasonable assur-
37 ance that such individual will perform services in any such
38 capacity for any educational institution in the second of
39 such academic years or terms or after such holiday or vaca-
40 tion period: *Provided*, That subsection (1) of this section
41 shall apply with respect to such services prior to January
42 one, one thousand nine hundred seventy-eight;

43 (b) With respect to services performed after December
44 thirty-one, one thousand nine hundred seventy-seven, in any
45 other capacity for an educational institution (other than an
46 institution of higher education as defined in section three
47 of article one), benefits shall not be paid on the basis of
48 such services to any individual for any week which com-
49 mences during any holiday or vacation period, or during a
50 period between two successive academic years or terms if
51 such individual performs such services in the first of such
52 academic years or terms or prior to the beginning of such
53 holiday or vacation period and there is a reasonable assur-
54 ance that such individual will perform such services in the
55 second of such academic years or terms or after such holiday
56 or vacation periods.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-1. Definitions.

1 As used in this article, unless the context clearly requires
2 otherwise:

3 (1) "Extended benefit period" means a period which

4 (a) Begins with the third week after whichever of the fol-
5 lowing weeks occurs first:

6 (i) A week for which there is a national "on" indicator; or

7 (ii) A week for which there is a state "on" indicator; and

8 (b) Ends with either of the following weeks, whichever
9 occurs later:

10 (i) The third week after the first week for which there is
11 both a national "off" indicator and a state "off" indicator; or

12 (ii) The thirteenth consecutive week of such period.

13 Notwithstanding the foregoing provisions of this section, no
14 extended benefit period may begin by reason of a state "on"
15 indicator before the fourteenth week following the end of a
16 prior extended benefit period which was in effect with respect
17 to this state, and no extended benefit period may become
18 effective in this state prior to the sixty-first day following the
19 date of enactment of the Federal-State Extended Unemploy-
20 ment Compensation Act of 1970 and, within the period be-
21 ginning on such sixty-first day and ending on December
22 thirty-one, one thousand nine hundred seventy-one, an ex-
23 tended benefit period may become effective and be terminated
24 in this state solely by reason of a state "on" and state "off"
25 indicator, respectively.

26 (2) There is a national "on" indicator for a week if, for
27 the period consisting of such week and the immediately pre-
28 ceding twelve weeks, the rate of insured unemployment (sea-
29 sonally adjusted) for all states equaled or exceeded four and
30 five-tenths percent. The rate of insured unemployment, for
31 the purposes of this subsection, shall be determined by the
32 secretary of labor by reference to the average monthly covered
33 employment for the first four of the most recent six calendar
34 quarters ending before the close of such period.

35 (3) There is a national "off" indicator for a week if, for
36 the period consisting of such week and the immediately pre-
37 ceding twelve weeks, the rate of insured unemployment (sea-
38 sonally adjusted) for all states was less than four and five-
39 tenths percent. The rate of insured unemployment, for the

40 purposes of this subsection, shall be determined by the secre-
41 tary of labor by reference to the average monthly covered
42 employment for the first four of the more recent six calendar
43 quarters ending before the close of such period.

44 (4) There is a "state 'on' indicator" for this state for a
45 week if the commissioner determines, in accordance with the
46 regulations of the United States secretary of labor, that for
47 the period consisting of such week and the immediately pre-
48 ceding twelve weeks, the rate of insured unemployment (not
49 seasonally adjusted) under this article:

50 (a) Equaled or exceeded one hundred twenty percent of
51 the average of such rates for the corresponding thirteen-week
52 period ending in each of the preceding two calendar years,
53 and

54 (b) Equaled or exceeded four percent.

55 (5) There is a "state 'off' indicator" for this state for a
56 week if the commissioner determines, in accordance with the
57 regulations of the United States secretary of labor, that for
58 the period consisting of such week and the immediately pre-
59 ceding twelve weeks, the rate of insured unemployment (not
60 seasonally adjusted) under this article:

61 (a) Was less than one hundred twenty percent of the aver-
62 age of such rates for the corresponding thirteen-week period
63 ending in each of the preceding two calendar years, or

64 (b) Was less than four percent.

65 (6) "Rate of insured unemployment," for purposes of sub-
66 divisions (4) and (5) of this section, means the percentage
67 derived by dividing

68 (a) The average weekly number of individuals filing claims
69 in this state for weeks of unemployment with respect to the
70 most recent thirteen-consecutive-week period, as determined
71 by the commissioner on the basis of his reports to the United
72 States secretary of labor, by

73 (b) The average monthly employment covered under this
74 chapter for the first four of the most recent six completed

75 calendar quarters ending before the end of such thirteen-
76 week period.

77 (7) "Regular benefits" means benefits payable to an indi-
78 vidual under this chapter or under any other state law (in-
79 cluding benefits payable to federal civilian employees and to
80 ex-servicemen pursuant to 5 U.S.C., chapter 85) other than
81 extended benefits.

82 (8) "Extended benefits" means benefits (including benefits
83 payable to federal civilian employees and to ex-servicemen
84 pursuant to 5 U.S.C., chapter 85) payable to an individual
85 under the provisions of this article for weeks of unemploy-
86 ment in his eligibility period.

87 (9) "Eligibility period" of an individual means the period
88 consisting of the weeks in his benefit year which begin in an
89 extended benefit period and, if his benefit year ends within
90 such extended benefit period, any weeks thereafter which be-
91 gin in such period.

92 (10) "Exhaustee" means an individual who, with respect
93 to any week of unemployment in his eligibility period:

94 (a) Has received, prior to such week, all of the regular
95 benefits which were available to him under this chapter or
96 any other state law (including dependents' allowances and
97 benefits payable to federal civilian employees and ex-service-
98 men under 5 U.S.C., chapter 85) in his current benefit year
99 that includes such week: *Provided*, That for the purposes of
100 this subdivision, an individual shall be deemed to have received
101 all of the regular benefits which were available to him al-
102 though (i) as a result of a pending appeal with respect to wages
103 and/or employment which were not considered in the original
104 monetary determination in his benefit year, he may subse-
105 quently be determined to be entitled to added regular benefits,
106 or (ii) he may be entitled to regular benefits with respect to
107 future weeks of unemployment, but such benefits are not pay-
108 able with respect to such week of unemployment by reason of
109 the provisions of section one-a, article six of this chapter; or

110 (b) His benefit year having expired prior to such week,
111 has no, or insufficient, wages and/or employment on the basis

112 of which he could establish a new benefit year which would in-
113 clude such week; and

114 (c) Has no right to unemployment benefits or allowances,
115 as the case may be, under the Railroad Unemployment Insur-
116 ance Act, the Trade Expansion Act of 1962, the Automotive
117 Products Trade Act of 1965 and such other federal laws as are
118 specified in regulations issued by the United States secretary of
119 labor; and has not received and is not seeking unemployment
120 benefits under the unemployment compensation law of the
121 Virgin Islands or of Canada; but if he is seeking such benefits
122 and the appropriate agency finally determines that he is not
123 entitled to benefits under such law he is considered an ex-
124 haustee.

125 (11) "State law" means the unemployment insurance law
126 of any state, approved by the United States secretary of labor
127 under section 3304 of the Internal Revenue Code of 1954.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-8. Appeal from deputy's decision.

1 A claimant, last employer or other interested party, may
2 file an appeal from the decision of the deputy within eight
3 calendar days after notice of the decision has been delivered
4 or mailed to the claimant and last employer as provided in
5 section four of this article. The period within which an
6 appeal from the decision of the deputy may be filed shall
7 be stated in such notice. The decision of the deputy shall be
8 final and benefits shall be paid or denied in accordance
9 therewith unless an appeal is filed within such time.

10 Upon appeal from the determination of a deputy, an
11 individual shall be entitled to a fair hearing and reasonable
12 opportunity to be heard before an appeal tribunal as provided
13 in section seven of this article.

14 Within eight days after receipt by the board of notice
15 of appeal from the decision of a deputy, the board shall fix
16 the time and place for hearing such appeal, and notify the
17 claimant, last employer, and the commissioner, ten days in
18 advance of the date set for hearing.

19 Upon consideration of all evidence the appeal tribunal

20 shall make a decision within twenty-one days after the date
21 of the hearing and shall notify the claimant, last employer,
22 and the commissioner of its findings and decision.

ARTICLE 11. LIMITATIONS ON CERTAIN PROVISIONS.

§21A-11-1. Expiration of certain provisions upon certain contingencies.

1 If United States Public Law 94-566, as enacted by the
2 Congress of the United States or the federal acts it amends,
3 should be adjudged unconstitutional or invalid in its or their
4 application or stayed pendete lite as to state or local employees
5 by a court of competent jurisdiction, then the coverage of those
6 employees under this act is automatically stayed or repealed to
7 the extent of the adjudged unconstitutionality, invalidity or
8 inapplicability. The repeal shall be effective from the date of
9 final disposition upon appeal or from the date of expiration of
10 the right of appeal and shall apply to relevant matters pending
11 at that time. If United States Public Law 94-566, as enacted
12 by the Congress of the United States or those provisions there-
13 of relating to coverage of state and local employees, should at
14 any time be repealed by the Congress of United States, then
15 the provisions of this chapter relating to coverage of state and
16 local employees shall be automatically repealed and of no
17 further force and effect.

CHAPTER 107

(Com. Sub. for H. B. 1138—By Mr. Otte)

[Passed March 11, 1978; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one-f, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one-f by adding thereto a new section, designated section five, all relating to increasing the powers of the Wheeling creek watershed protection and flood prevention commission to permit sale or other disposition of property acquired by the

commission; procedures for sale or disposition; how money received to be used; effective date; and when commission authorized to dispose of real and personal property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1F. WHEELING CREEK WATERSHED PROTECTION AND FLOOD PREVENTION DISTRICT COMPACT.

§29-1F-1. Wheeling Creek Watershed protection and flood prevention district compact approved.

§29-1F-5. When commission authorized to dispose of real and personal property.

§29-1F-1. Wheeling Creek Watershed protection and flood prevention district compact approved.

1 The following Wheeling Creek Watershed protection and
2 flood prevention district compact, which has been negotiated
3 by representatives of the commonwealth of Pennsylvania and
4 the state of West Virginia, is hereby approved, ratified,
5 adopted, enacted into law and entered into by the state of
6 West Virginia as a party thereto and signatory state, namely:

7 **WHEELING CREEK WATERSHED PROTECTION AND FLOOD**
8 **PREVENTION DISTRICT COMPACT**

9 **Article I. Recitation of Reasons for Compact.**

10 WHEREAS, Wheeling creek, a tributary of the Ohio river,
11 arises in Pennsylvania, flows through Washington and Greene
12 counties of that commonwealth, enters the state of West
13 Virginia, flows through Marshall and Ohio counties, West
14 Virginia, and empties into the Ohio River at Wheeling, West
15 Virginia; and

16 WHEREAS, The inhabitants of Marshall and Ohio counties,
17 West Virginia, and, also, but to a much lesser degree, the
18 inhabitants of Washington and Greene counties, Pennsylvania,
19 living along Wheeling creek have over the years experienced
20 loss of life and property from flooding of that stream; and

21 WHEREAS, Surveys made by the soil conservation service of
22 the United States department of agriculture indicate that
23 the inhabitants of the four counties named can best be pro-
24 tected from the flooding of Wheeling creek by flood prevention
25 dams constructed thereon with some of the dams being located
26 on the upper reaches of the stream and its tributaries in the
27 commonwealth of Pennsylvania; and

28 WHEREAS, The federal Watershed Protection and Flood
29 Prevention Act of 1954, as amended, authorizes, under certain
30 circumstances, federal assistance to local organizations in pre-
31 paring and carrying out undertakings for flood prevention and
32 the conservation, development, utilization and disposal of water
33 in watershed or subwatershed area; and

34 WHEREAS, No local organization within the meaning of
35 the federal act aforesaid, established by or organized under
36 the laws of West Virginia, is competent under state laws, to
37 acquire land for, construct, and operate, with or without
38 federal assistance, flood prevention facilities in the common-
39 wealth of Pennsylvania, and it appears that no such local
40 organization established by or organized under the laws of
41 the commonwealth of Pennsylvania can justify the expendi-
42 ture of locally raised funds to construct and operate flood
43 prevention facilities which will benefit primarily the inhabi-
44 tants of the neighboring state of West Virginia; and

45 WHEREAS, Facilities erected on the upper reaches of
46 Wheeling creek and its tributaries for flood control and
47 prevention can nevertheless have a recreational value for
48 the citizens of both West Virginia and Pennsylvania and
49 particularly the citizens of Ohio and Marshall counties,
50 West Virginia, and Washington and Greene counties, Penn-
51 sylvania; accordingly, for purposes of promoting that poten-
52 tial, as well as providing a vehicle or means whereby federal
53 assistance may be enlisted for the protection of citizens of
54 her neighboring state of West Virginia from the flooding of
55 Wheeling creek, the commonwealth of Pennsylvania joins
56 with the state of West Virginia in negotiating and ratifying
57 this compact; now therefore,

58 **Article II. Wheeling Creek Watershed Protection and**
59 **Flood Prevention District Created.**

60 The commonwealth of Pennsylvania and the state of West
61 Virginia hereby create as an agency and instrumentality of
62 the governments thereof a district to be known as the "Wheel-
63 ing creek watershed protection and flood prevention district,"
64 hereinafter called the district, which shall embrace all terri-
65 tory in the commonwealth of Pennsylvania and the state of
66 West Virginia, the water in which flows ultimately into
67 Wheeling creek or its tributaries.

68 **Article III. Wheeling Creek Watershed Protection and**
69 **Flood Prevention Commission Created.**

70 The commonwealth of Pennsylvania and the state of West
71 Virginia hereby create as the governing body of the district
72 the "Wheeling creek watershed protection and flood pre-
73 vention commission," hereinafter called the commission, which
74 shall be a body corporate, with the powers and duties set
75 forth herein, and such additional powers as may be conferred
76 upon it by subsequent concurrent action of the General Assem-
77 bly of Pennsylvania and the Legislature of West Virginia or
78 by act or acts of the Congress of the United States.

79 **Article IV. Composition of Commission.**

80 The commission shall consist of five commissioners from
81 Pennsylvania and five commissioners from West Virginia, each
82 of whom shall be a citizen of the commonwealth or state from
83 which he is appointed. The commissioners from the common-
84 wealth and from the state shall be chosen in the manner and
85 for the terms provided by the laws of the commonwealth or
86 state from which they shall be appointed, and any commis-
87 sioner may be removed or suspended from office as provided
88 by the law of the commonwealth or state from which he shall
89 be appointed. Vacancies on the commission shall be filled in
90 the manner provided by the laws of the commonwealth or
91 state among whose representation on the commission the va-
92 cancy occurs.

93 The commissioners shall serve without compensation from
94 the commission but they shall be paid by the commission

95 their actual expenses incurred and incident to the perfor-
96 mance of their duties.

97 **Article V. Organization of Commission.**

98 The commission shall meet and organize within sixty days
99 after the effective date of this compact, shall elect from
100 its number a chairman and vice chairman, and shall appoint,
101 and at its pleasure remove or discharge, such officers and legal,
102 clerical, expert and other assistants as may be required to
103 carry the provisions of this compact into effect, and shall
104 determine their qualifications and fix their duties and com-
105 pensation. It shall adopt a seal and suitable bylaws, and shall
106 adopt and promulgate rules and regulations for its management
107 and control. It may establish and maintain one or more offices
108 within the district for the transaction of its business, and may
109 meet at any time or place. The presence of three commissioners
110 from the commonwealth of Pennsylvania and three commis-
111 sioners from the state of West Virginia shall constitute a quo-
112 rum, and a majority vote of the quorum shall be necessary to
113 pass upon matters before the commission.

114 **Article VI. Powers and Duties.**

115 The commission is hereby authorized and empowered:

116 (a) To be and serve in the capacity of a local organization
117 within the meaning of the Watershed Protection and Flood
118 Prevention Act of the eighty-third Congress of the United
119 States, second session, (Public Law 566), approved August
120 4, 1954, as from time to time amended, and in that capacity
121 the commission shall have the following authority and powers:

122 (1) To apply for and receive federal financial and other
123 assistance in preparing and carrying out plans for works of
124 improvement as that term is defined in said federal act, as
125 from time to time amended, hereinafter referred to as works
126 of improvement, and to apply for and receive federal finan-
127 cial and other assistance under the aforementioned or other
128 federal acts in preparing and carrying out plans for public fish
129 and wildlife or recreational development in connection with
130 works of improvement, including the construction and opera-
131 tion of all facilities which may be necessary or incident to such

132 works of improvement and public fish and wildlife or recre-
133 ational development in connection therewith.

134 (2) To acquire, or, with respect to interests in land to be
135 acquired by condemnation, provide assurances satisfactory
136 to the secretary of agriculture of the United States or other
137 agent or agency of the United States that the commission will
138 acquire such land, easements or right-of-ways as will be
139 needed in connection with works of improvement, and public
140 fish and wildlife or recreational development and facilities in
141 connection with works of improvement, installed with federal
142 assistance.

143 (3) To agree to operate and maintain any reservoir or
144 other area included in a plan for works of improvement or
145 public fish and wildlife or recreational development and fa-
146 cilities.

147 (4) To assume all or such proportionate share, as is
148 determined by the secretary of agriculture of the United
149 States or other agent or agency of the United States, of the
150 cost of installing any works of improvement, involving federal
151 assistance, which is applicable to the agricultural phases of
152 the conservation, development, utilization and disposal of
153 water or for fish and wildlife or recreational development and
154 facilities or to purposes other than flood prevention and fea-
155 tures relating thereto.

156 (5) To make arrangements satisfactory to the secretary of
157 agriculture of the United States or other agent or agency of
158 the United States for defraying costs of operating and main-
159 taining works of improvement and public fish and wildlife or
160 recreational development and facilities in connection with
161 works of improvement: *Provided*, That such arrangements
162 shall be based solely upon contributions, allotments or com-
163 mitments of funds to the district or commission.

164 (6) To acquire, or provide assurance that landowners or
165 water users have acquired, such water rights, pursuant to the
166 law of the commonwealth or state applicable thereto, as may
167 be needed in the installation and operation of the works of
168 improvement and public fish and wildlife or recreational de-

169 velopment and facilities in connection with works of improve-
170 ment.

171 (7) To cooperate with soil conservation districts in ob-
172 taining agreements to carry out recommended soil conser-
173 vation measures and proper farm plans from owners of
174 land situated in the drainage area above each retention
175 reservoir to be installed with or without federal assistance.

176 (8) To apply for and receive federal loans or advancements
177 to finance the local share of costs of carrying out works of
178 improvement and public fish and wildlife or recreational de-
179 velopment and facilities in connection with works of improve-
180 ment, and to submit a plan of repayment satisfactory to the
181 secretary of agriculture or other agent or agency of the United
182 States for any loan or advancement: *Provided*, That such plan
183 of repayment shall be based solely upon contributions, allot-
184 ments or commitments of funds to the district or commission.

185 (9) To cooperate, and enter into agreements with, the sec-
186 retary of agriculture of the United States or other agent or
187 agency of the United States, and to do all other things required,
188 not inconsistent with the provisions of this compact and the
189 laws of the commonwealth of Pennsylvania and the state of
190 West Virginia, to obtain maximum federal financial assistance
191 for works of improvement and public fish and wildlife or
192 recreational development and facilities in connection with such
193 works of improvement.

194 (b) To acquire within the district, land, easements, right-of-
195 ways and other property rights as may be needed in connection
196 with works of improvement and public fish and wildlife or
197 recreational development and facilities in connection with
198 such works of improvement and to make studies respecting,
199 and to plan, construct, maintain and operate works of im-
200 provement within the district and public fish and wildlife or
201 recreational development and facilities in connection with
202 such works of improvement.

203 (c) To obtain options upon and to acquire, by purchase,
204 exchange, lease, gift, grant, bequest, devise, eminent domain
205 or otherwise, any property, real or personal, or rights therein
206 for any of the purposes specified in this article of the compact:

207 *Provided*, That eminent domain proceedings shall be instituted
208 and prosecuted in the manner and forms provided by the laws
209 of the commonwealth or state in which the property or prop-
210 erty rights proceeded against are situate: *Provided, however*,
211 That no property now or hereafter vested in or held by the
212 commonwealth of Pennsylvania or the state of West Virginia,
213 or by any county, city, town, village, district, township, munic-
214 ipality or other political subdivision thereof shall be taken by
215 the district without the consent of the commonwealth, state or
216 political subdivision which owns the same.

217 (d) To maintain, administer and improve any properties
218 acquired, to charge fees for use of, and receive income from,
219 such properties and to expend such income in carrying out
220 the purposes and provisions of this compact, and to lease any
221 of its property or interests therein in accordance with the
222 following provisions and requirements: The board of commis-
223 sioners of the County of Ohio, West Virginia, the county com-
224 mission of Marshall County, West Virginia, the board of com-
225 missioners of Greene County, Pennsylvania, and the board of
226 commissioners of Washington County, Pennsylvania, shall each
227 have the option of leasing from the commission for such period
228 as the lessee may specify all or any part of the works of im-
229 provement and the public fish and wildlife and recreational
230 development and facilities in connection with works of im-
231 provement located within their respective counties upon the
232 following terms and conditions: (a) That in each such lease
233 the lessee in consideration thereof pay to the lessor the sum
234 of one dollar and agree to fully maintain at its (the lessee's)
235 expense all works of improvement and all such development
236 and facilities in connection therewith located within the county
237 of the lessee in accordance with the requirements of the Water-
238 shed Protection and Flood Prevention Act of the eighty-third
239 Congress of the United States, second session, (Public Law
240 566), approved August 4, 1954, as from time to time amend-
241 ed, and all agreements and work plans made or formulated
242 thereunder with respect to such works of improvement and
243 such development and facilities in connection therewith located
244 within the county of the lessee, and that for failure of the lessee
245 to comply with such agreement, the lessor shall be given the
246 right in the lease agreement to cancel the lease upon thirty

247 days' written notice to the lessee; (b) that any such lease not
248 be inconsistent with the provisions, or impair the purposes,
249 of this compact; and (c) that any such lease be approved by
250 the secretary of agriculture of the United States or other
251 federal agent or agencies having authority to extend approval
252 under the provisions of said act and agreements and work
253 plans made or formulated thereunder. In the event the board
254 of commissioners or county commission of any one of the four
255 counties named does not, within six months from the com-
256 pletion of the works of improvement and all such development
257 and facilities in connection therewith located in such county,
258 elect in writing transmitted to the commission to exercise the
259 option given to it by the foregoing provisions, or in the event
260 such option is exercised and the lease to such board of com-
261 missioners or county commission is subsequently canceled be-
262 cause of violation of the provision of the lease by the lessee, or
263 in the event such option is exercised and the board of commis-
264 sioners or county commission subsequently chooses not to re-
265 new its lease, the commissioners may lease all or any part of the
266 works of improvement and all such development and facilities
267 in connection therewith located within such county to any
268 other lessee which the commission may choose, and upon such
269 terms as may be agreed upon, provided (a) that any such
270 lease be approved by the board of commissioners or county
271 commission of the county in which any part or all of the works
272 of improvement and all such development and facilities in con-
273 nection therewith are located; (b) that any such lease not be
274 inconsistent with the provisions, or impair the purposes, of this
275 compact; (c) that any such lease be approved by the secretary
276 of agriculture of the United States or other federal agent or
277 agencies having authority to extend approval under the pro-
278 visions of said act and agreements and work plans made or
279 formulated thereunder; and the option of leasing in the board
280 of commissioners of the County of Ohio, West Virginia, the
281 County commission of Marshall County, West Virginia, the
282 board of commissioners of Greene County, Pennsylvania, and
283 the board of commissioners of Washington County, Pennsyl-
284 vania, shall include the right to sublease on the same terms and
285 conditions set out in this paragraph designated (d) to any in-
286 dividual, corporation, municipal subdivision or municipal

287 authority without the approval of the Wheeling Creek Water-
288 shed protection and flood prevention commission.

289 (e) To enter into contracts and other arrangements with
290 agencies of the United States, with persons, firms or corpora-
291 tions, including both public and private corporations, with the
292 government of the state and the government of the common-
293 wealth, or any department or agency of the United States, the
294 state or the commonwealth, with governmental divisions, with
295 soil conservation, drainage, flood control, soil erosion or
296 other improvement districts in the state or the commonwealth,
297 for cooperation or assistance in constructing, improving, oper-
298 ating or maintaining works of improvement within the district,
299 and public fish and wildlife or recreational development and
300 facilities in connection with works of improvement, or in pre-
301 venting floods, damage from sediment deposited by flood-
302 waters, or in clearance of stream beds, or in conserving, devel-
303 oping, utilizing and disposing of water in the district, or for
304 making surveys, investigations or reports thereof.

305 (f) To apply for, receive and use grants-in-aid, donations
306 and contributions from any source or sources, and to accept
307 and use, consistent with the purposes of this compact, be-
308 quests, devises, gifts and donations from any person, firm,
309 corporation, state, commonwealth or agency or political sub-
310 division thereof.

311 (g) To do any and all things necessary or convenient for
312 the purpose of promoting, developing and advancing the pur-
313 poses of said district herein set forth, and in promoting, devel-
314 oping and advancing the recreational development and facili-
315 ties incidental to the works of improvement that shall be con-
316 structed to achieve said purposes.

317 (h) To delegate any authority given to it by law to any of
318 its agents or employees, and to expend its funds in the execu-
319 tion of the powers and authority herein given.

320 (i) The commission, subject to the conditions herein, may
321 sell, exchange or lease property, real or personal, or any
322 interest therein.

323 When the property, or any interest or right therein, is being
324 held for future use, it may be leased. When the real property,

325 or any part thereof, or any interest or right therein, is deemed
326 by the commission not necessary, or desirable for present or
327 presently foreseeable future use, it may be exchanged for
328 other property, or any interest or right therein, deemed by the
329 commission to be necessary or desirable for present or pre-
330 sently foreseeable future use, or may be sold. In addition the
331 commission may exchange real property, or any part thereof,
332 or any interest or right therein, even though it may be desir-
333 able or necessary for present or presently foreseeable future
334 use, if the exchange is made for other real property, or any
335 interest or right therein, in close proximity thereto which the
336 commission deems of equal or superior value for presently
337 foreseeable future use. In making exchanges the commission
338 may make allowances for differences in values of the proper-
339 ties being exchanged and may move or pay the cost of moving
340 buildings, structures or appurtenances in connection with the
341 exchange.

342 Every such sale of real property, or any interest or right
343 therein or structure thereon, shall be at public auction in the
344 county in which the real property, or the greater part thereof
345 in value, is located, and the commission shall advertise, by
346 publication or otherwise, the time, place and terms of such
347 sale at least twenty days prior thereto. The property shall be
348 sold in the manner which will bring the highest and best price
349 therefor. The commission may reject any and all bids received
350 at the sale. The commission shall keep a record, open to
351 public inspection, indicating the manner in which such real
352 property or any interest or right therein or structure thereon,
353 was publicly advertised for sale, the highest bid received there-
354 for and from whom, the person to whom sold, and payment
355 received therefor. Such record shall be kept for a period of
356 five years and may thereafter be destroyed.

357 The commission may insert in a deed or conveyance,
358 whether it involves an exchange, lease or sale, such conditions
359 as are in the public interest.

360 All moneys received from the exchange, sale or lease of
361 real or personal property, or any right or interest therein, shall
362 be paid into the commission's treasury and used for the
363 purpose for which the commission was created.

364 If the commission has heretofore sold and conveyed away
365 or leased any such property, such transaction and the docu-
366 ments of lease or transfer therefor are hereby approved and
367 confirmed and shall be as effective as if the authority to lease
368 or convey the said property had been given in this statute as
369 originally enacted.

370

Article VII. Fiscal Affairs.

371 The commission shall submit at the appropriate or desig-
372 nated time to the board of commissioners of the County of
373 Ohio, West Virginia, the county commission of Marshall
374 County, West Virginia, the board of commissioners of Greene
375 County, Pennsylvania, and the board of commissioners of
376 Washington County, Pennsylvania, an annual budget of its
377 estimated expenditures, which budget shall contain specific
378 recommendations of the amount or amounts to be appropriated
379 by each of the named governing bodies.

380 The commission shall not incur any obligation prior to the
381 commitment or allotment of funds by the named governing
382 bodies or by other sources adequate to meet the same.

383 The commission shall keep accurate accounts of all re-
384 cepts and disbursements, which accounts shall be open for
385 inspection at any reasonable time and shall be subject to audit
386 by representatives of contributing political subdivisions and of
387 the commonwealth of Pennsylvania and state of West Vir-
388 ginia. The receipts and disbursements of the commission shall
389 be subject to the audit and accounting procedures established
390 under its bylaws: *Provided*, That all receipts and disburse-
391 ments of the commission shall be audited yearly by a quali-
392 fied public accountant, and the report of the audit shall be
393 transmitted to each contributor of funds to the district or
394 commission.

395

Article VIII. Exemption from Taxes and Fees.

396 The district and the property belonging to the district shall
397 be exempt from the payment of all taxes or fees imposed by
398 the commonwealth of Pennsylvania or the state of West Vir-
399 ginia and by any agency and political subdivision thereof.

400

Article IX. Effective Date of Compact.

401 This compact shall become effective upon ratification by
402 the General Assembly of the commonwealth of Pennsylvania
403 and the Legislature of the state of West Virginia and upon
404 approval by the Congress of the United States.

§29-1F-5. When commission authorized to dispose of real and personal property.

1 Subdivision (i), article VI, of the Wheeling creek watershed
2 protection and flood prevention district compact shall be
3 effective from the date of its enactment insofar as it relates
4 to property situated in the state of West Virginia, but shall
5 not apply to property situated in the commonwealth of Penn-
6 sylvania until and unless enacted by said commonwealth.

CHAPTER 108

(Com. Sub. for S. B. 476—By Mr. Davis and Mr. Huffman)

[Passed March 11, 1978; in effect July 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections one-c, five, six, six-a, eight-c, ten and sixteen, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact sections one and two, article four-a of said chapter; and to further amend said chapter, by adding thereto a new article, designated article five-a, all relating to workmen's compensation; providing for payment of medical benefits; payment of benefits after the first three days of disability; increasing maximum benefits; statutory amount of hearing loss; providing of benefits for occupational pneumoconiosis without pulmonary impairment; time for filing objections to findings and conclusions of the occupational pneu-

moconiosis board; increased age limits for certain dependents and providing for a lump sum payment to dependent's survivors; time limitation on filing for awards; providing for release of medical information to employers and their representatives; providing that children of disabled employees receiving benefits from the disabled workmen's relief fund may receive such benefits to age twenty-three under certain circumstances; and prohibiting certain discriminatory practices.

Be it enacted by the Legislature of West Virginia:

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

Article

4. Disability and Death Benefits.

4A. Disabled Workmen's Relief Fund.

5A. Discriminatory Practices.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

- §23-4-1c.** Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.
- §23-4-5.** Benefits for first three days after injury.
- §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.
- §23-4-7.** Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.
- §23-4-8c.** Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.
- §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.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

1 Upon a finding by the commissioner that a claimant
2 has sustained a compensable injury within the meaning
3 of section one of this article, and upon proof by proper
4 physician's report, or otherwise, that disability will last
5 longer than three days as provided in section five of this
6 article, the commissioner shall immediately commence
7 payment of temporary total disability benefits to the
8 claimant in the amounts provided for in sections six and
9 fourteen of this article, and payment of the expenses pro-
10 vided for in subdivision (a), section three of this article
11 relating to said injury without waiting for the expiration
12 of the thirty-day period during which objections may be
13 filed to such findings as provided in section one, article
14 five of this chapter. The commissioner shall give immedi-
15 ate notice to the employer of his findings and of the com-
16 mencement of such payments.

17 The commissioner shall determine whether or not the
18 claimant has sustained a compensable injury within the
19 meaning of section one of this article, and shall com-
20 mence payment of temporary total disability benefits as
21 provided herein within fifteen days of receipt of the
22 employee's or employer's report of injury, whichever is
23 received sooner, and receipt of either a proper physician's
24 report or any other information necessary for a determi-
25 nation.

26 Upon receipt of the first report of injury in a claim,
27 the commissioner shall request from the employer or
28 employers any wage information necessary for determin-
29 ing the rate of benefits to which the employee is entitled.
30 If an employer does not furnish the commissioner with
31 this information within fifteen days from the date the
32 commissioner received the first report on injury in the
33 case, the employee shall be paid total temporary dis-
34 ability benefits for lost time at the maximum rate. The
35 commissioner shall adjust the rate prospectively upon

36 receipt of proper information; however, notwithstanding
37 any other provision of this section, the employer shall
38 not be entitled to a credit or refund for previous over-
39 payments caused by his failure to provide proper wage
40 information. If the employee had more than one em-
41 ployer during the twelve months preceding the injury,
42 any overpayment resulting from the provisions of this
43 paragraph shall be charged only against the employer or
44 employers who failed to supply wage information.

45 Upon a finding of the commissioner that a claimant,
46 who has sustained a previous compensable injury which
47 has been closed by an award of total temporary disability
48 or permanent partial disability, suffers further temporary
49 total disability or requires further medical or hospital
50 treatment resulting from the compensable injury giving
51 rise to the former award, the commissioner shall immedi-
52 ately commence payment of temporary total disability
53 benefits to the claimant in the amounts provided for in
54 sections six and fourteen of this article, and the expenses
55 provided for in subdivision (a), section three of this
56 article, relating to said disability, without waiting for
57 the expiration of the thirty-day period during which
58 objections may be filed to such findings as provided in
59 section one, article five of this chapter. The commissioner
60 shall give immediate notice to the employer of his find-
61 ings and of the commencement of such payment.

62 Where the employer is a subscriber to the workmen's
63 compensation fund under the provisions of article three
64 of this chapter, and upon the findings aforesaid, the
65 commissioner shall mail all workmen's compensation
66 checks paying temporary total disability benefits directly
67 to the claimant and not to the employer for delivery to
68 the claimant.

69 Where the employer has elected to carry his own risk
70 under section nine, article two of this chapter, and upon
71 the findings aforesaid, the commissioner shall immedi-
72 ately issue a pay order directing the employer to pay such
73 amounts as are due the claimant for temporary total dis-
74 ability benefits. A copy of the order shall be sent to the

75 claimant. The self-insured employer shall commence such
76 payments by mailing or delivering the payments directly
77 to the employee within ten days of the date of the receipt
78 of the pay order by the employer. If the self-insured em-
79 ployer believes that his employee is entitled to benefits, he
80 may start payments before receiving a pay order from the
81 commissioner.

82 In the event that an employer files a timely objection to
83 any finding or order of the commissioner, as provided in
84 section one, article five of this chapter, with respect to the
85 payment or continued payment of temporary total disabili-
86 ty benefits and those expenses as outlined in subdivision
87 (a), section three of this article, as provided herein, the
88 commissioner shall continue to pay to the claimant such
89 benefits and expenses during the period of such disability
90 unless it is subsequently found by the commissioner that
91 the claimant was not entitled to receive the temporary
92 total disability benefits and the expenses provided for in
93 subdivision (a), section three of this article, or any part
94 thereof, so paid, in which event the commissioner shall,
95 where the employer is a subscriber to the fund, credit said
96 employer's account with the amount of the overpayment;
97 and, where the employer has elected to carry his own risk,
98 the commissioner shall refund to such employer the
99 amount of the overpayment. The amounts so credited to a
100 subscriber or repaid to a self-insurer shall be charged by
101 the commissioner to the surplus fund created by section
102 one, article three of this chapter. If the final decision in
103 any case determines that a claimant was not lawfully en-
104 titled to benefits paid to him pursuant to a prior decision,
105 such amount of benefits so paid shall be deemed overpaid.
106 The commissioner may recover such amount by civil
107 action or in any manner provided in this code for the
108 collection of past-due payment and shall withhold, in
109 whole or in part, as determined by the commissioner,
110 any future benefits payable to the individual and credit
111 such amount against the overpayment until it is repaid
112 in full.

§23-4-5. Benefits for first three days after injury.

1 If the period of disability does not last longer than

2 three days from the day the employee leaves work as
3 the result of the injury, no award shall be allowed,
4 except the disbursements provided for in the two next
5 preceding sections, but if the period of disability lasts
6 longer than seven days from the day the employee
7 leaves work as a result of the injury, an award shall be
8 allowed for the first three days of such disability.

§23-4-6. Classification of disability benefits.

1 Where compensation is due an employee under the
2 provisions of this chapter for personal injury, such com-
3 pensation shall be as provided in the following sched-
4 ule:

5 (a) The expressions "average weekly wage earn-
6 ings, wherever earned, of the injured employee, at the
7 date of injury" and "average weekly wage in West
8 Virginia," as used in this chapter, shall have the mean-
9 ing and shall be computed as set forth in section four-
10 teen of this article.

11 (b) If the injury causes temporary total disability,
12 the employee shall receive during the continuance
13 thereof weekly benefits as follows: A maximum weekly
14 benefit to be computed on the basis of seventy percent
15 of the average weekly earnings, wherever earned, of
16 the injured employee, at the date of injury, not to
17 exceed the percentage of the average weekly wage
18 in West Virginia, as follows: On or after July one,
19 one thousand nine hundred sixty-nine, forty-five per-
20 cent; on or after July one, one thousand nine hundred
21 seventy, fifty percent; on or after July one, one thou-
22 sand nine hundred seventy-one, fifty-five percent; on
23 or after July one, one thousand nine hundred seventy-
24 three, sixty percent; on or after July one, one thousand
25 nine hundred seventy-four, eighty percent; on or after
26 July one, one thousand nine hundred seventy-five,
27 one hundred percent.

28 The minimum weekly benefits paid hereunder shall
29 not be less than twenty-six dollars per week for in-
30 juries occurring on or after July one, one thousand

31 nine hundred sixty-nine; not less than thirty-five dollars
32 per week for injuries occurring on or after July one,
33 one thousand nine hundred seventy-one; not less than
34 forty dollars per week for injuries occurring on or after
35 July one, one thousand nine hundred seventy-three;
36 not less than forty-five dollars per week for injuries
37 occurring on or after July one, one thousand nine hun-
38 dred seventy-four; and for injuries occurring on or after
39 July one, one thousand nine hundred seventy-six, thirty-
40 three and one-third percent of the average weekly wage
41 in West Virginia.

42 (c) Subdivision (b) shall be limited as follows:
43 Aggregate award for a single injury causing temporary
44 disability shall be for a period not exceeding two hun-
45 dred eight weeks.

46 (d) If the injury causes permanent total disability,
47 benefits shall be payable during the remainder of life
48 at the maximum or minimum weekly benefits as pro-
49 vided in subdivision (b) of this section for temporary
50 total disability. A permanent disability of eighty-five
51 percent or more shall be deemed a permanent total
52 disability for the purpose of this section.

53 (e) If the injury causes permanent disability less
54 than permanent total disability, the percentage of dis-
55 ability to total disability shall be determined and the
56 award computed on the basis of four weeks' compen-
57 sation for each percent of disability determined, at the
58 following maximum or minimum benefit rates: Seventy
59 percent of the average weekly earnings, wherever earned,
60 of the injured employee, at the date of injury, not to
61 exceed the percentage of the average weekly wage
62 in West Virginia, as follows: On or after July one, one
63 thousand nine hundred sixty-nine, forty-five percent;
64 on or after July one, one thousand nine hundred sev-
65 enty, fifty percent; on or after July one, one thousand
66 nine hundred seventy-one, fifty-five percent; on or after
67 July one, one thousand nine hundred seventy-three,
68 sixty percent; on or after July one, one thousand
69 nine hundred seventy-five, sixty-six and two-thirds
70 percent.

71 The minimum weekly benefit under this subdivision
72 shall be as provided in subdivision (b) of this section
73 for temporary total disability.

74 (f) If the injury results in the total loss by severance
75 of any of the members named in this subdivision, the
76 percentage of disability shall be determined by the
77 commissioner, with the following table establishing the
78 minimum percentage of disability. In determining the
79 percentage of disability, the commissioner may be guided
80 by but shall not be limited to the disabilities enumer-
81 ated in the following table, and in no event shall the
82 disability be less than that specified in the following
83 table:

84 The loss of a great toe shall be considered a ten per-
85 cent disability.

86 The loss of a great toe (one phalanx) shall be con-
87 sidered a five percent disability.

88 The loss of other toes shall be considered a four per-
89 cent disability.

90 The loss of other toes (one phalanx) shall be con-
91 sidered a two percent disability.

92 The loss of all toes shall be considered a twenty-five
93 percent disability.

94 The loss of forepart of foot shall be considered a thirty
95 percent disability.

96 The loss of foot shall be considered a thirty-five per-
97 cent disability.

98 The loss of a leg shall be considered a forty-five per-
99 cent disability.

100 The loss of thigh shall be considered a fifty percent dis-
101 ability.

102 The loss of thigh at hip joint shall be considered a
103 sixty percent disability.

104 The loss of a little or fourth finger (one phalanx)
105 shall be considered a three percent disability.

- 106 The loss of a little or fourth finger shall be considered
107 a five percent disability.
- 108 The loss of ring or third finger (one phalanx) shall
109 be considered a three percent disability.
- 110 The loss of ring or third finger shall be considered
111 a five percent disability.
- 112 The loss of middle or second finger (one phalanx) shall
113 be considered a three percent disability.
- 114 The loss of middle or second finger shall be considered
115 a seven percent disability.
- 116 The loss of index or first finger (one phalanx) shall
117 be considered a six percent disability.
- 118 The loss of index or first finger shall be considered a
119 ten percent disability.
- 120 The loss of thumb (one phalanx) shall be considered
121 a twelve percent disability.
- 122 The loss of thumb shall be considered a twenty per-
123 cent disability.
- 124 The loss of thumb and index finger shall be con-
125 sidered a thirty-two percent disability.
- 126 The loss of index and middle finger shall be con-
127 sidered a twenty percent disability.
- 128 The loss of middle and ring finger shall be considered
129 a fifteen percent disability.
- 130 The loss of ring and little finger shall be considered
131 a ten percent disability.
- 132 The loss of thumb, index and middle finger shall be
133 considered a forty percent disability.
- 134 The loss of index, middle and ring finger shall be
135 considered a thirty percent disability.
- 136 The loss of middle, ring and little finger shall be
137 considered a twenty percent disability.
- 138 The loss of four fingers shall be considered a thirty-
139 two percent disability.

140 The loss of hand shall be considered a fifty percent
141 disability.

142 The loss of forearm shall be considered a fifty-five
143 percent disability.

144 The loss of arm shall be considered a sixty percent
145 disability.

146 The total and irrecoverable loss of the sight of one
147 eye shall be considered a thirty-three percent disability.
148 For the partial loss of vision in one, or both eyes, the
149 percentages of disability shall be determined by the
150 commissioner, using as a basis the total loss of one
151 eye.

152 The total and irrecoverable loss of the hearing of one
153 ear shall be considered a twenty-five percent disability.
154 The total and irrecoverable loss of hearing of both ears
155 shall be considered a sixty-five percent disability.

156 For the partial loss of hearing in one, or both ears,
157 the percentage of disability shall be determined by the
158 commissioner, using as a basis the total loss of hearing
159 in both ears.

160 Should a claimant sustain a compensable injury which
161 results in the total loss by severance of any of the bodily
162 members named in this subdivision, die from sickness
163 or noncompensable injury before the commissioner
164 makes the proper award for such injury, the commis-
165 sioner shall make such award to claimant's dependents
166 as defined in this chapter, if any; such payment to be
167 made in the same installments that would have been
168 paid to claimant if living: *Provided*, That no payment
169 shall be made to any widow of such claimant after her
170 remarriage, and that this liability shall not accrue to
171 the estate of such claimant and shall not be subject
172 to any debts of, or charges against, such estate.

173 (g) Should a claimant to whom has been made a
174 permanent partial award of from one percent to eighty-
175 four percent, both inclusive, die from sickness or non-
176 compensable injury, the unpaid balance of such award

177 shall be paid to claimant's dependents as defined in this
178 chapter, if any; such payment to be made in the same
179 installments that would have been paid to claimant if
180 living: *Provided*, That no payment shall be made to
181 any widow of such claimant after her remarriage, and
182 that this liability shall not accrue to the estate of such
183 claimant and shall not be subject to any debts of, or
184 charges against, such estate.

185 (h) For the purposes of this chapter, a finding of
186 the occupational pneumoconiosis board shall have the
187 force and effect of an award.

188 (i) The award for permanent disabilities intermediate
189 to those fixed by the foregoing schedule and permanent
190 disability of from one percent to eighty-four percent
191 shall be the same proportion and shall be computed and
192 allowed by the commissioner.

193 (j) The percentage of all permanent disabilities other
194 than those enumerated in subdivision (f) of this section
195 shall be determined by the commissioner, and awards
196 made in accordance with the provisions of subdivision
197 (d) or (e) of this section. Where there has been an
198 injury to a member as distinguished from total loss by
199 severance of that member, the commissioner in deter-
200 mining the percentage of disability may be guided by
201 but shall not be limited to the disabilities enumerated
202 in subdivision (f) of this section.

203 (k) Compensation payable under any subdivision of
204 this section shall not exceed the maximum nor be less
205 than the weekly benefits specified in subdivision (b) of
206 this section.

207 (l) Temporary total disability benefits payable under
208 subdivision (b) of this section shall not be deductible
209 from permanent partial disability awards payable un-
210 der subdivision (e) or (f) of this section. Compensation,
211 either total temporary or permanent partial, under this
212 section shall be payable only to the injured employee
213 and the right thereto shall not vest in his or her estate,
214 except that any unpaid compensation which would have

215 been paid or payable to the employee up to the time of
216 his death, if he had lived, shall be paid to the dependents
217 of such injured employee if there be such dependents at
218 the time of death.

219 (m) The following permanent disabilities shall be
220 conclusively presumed to be total in character:

221 Loss of both eyes or the sight thereof.

222 Loss of both hands or the use thereof.

223 Loss of both feet or the use thereof.

224 Loss of one hand and one foot or the use thereof.

225 In all other cases permanent disability shall be deter-
226 mined by the commissioner in accordance with the facts
227 in the case, and award made in accordance with the
228 provisions of subdivision (d) or (e).

229 (n) A disability which renders the injured employee
230 unable to engage in substantial gainful activity requiring
231 skills or abilities comparable to those of any gainful
232 activity in which he has previously engaged with some
233 regularity and over a substantial period of time shall
234 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.

1 If an employee is found to be permanently disabled due
2 to occupational pneumoconiosis, as defined in section one
3 of this article, the percentage of permanent disability
4 shall be determined by the commissioner in accordance
5 with the facts in the case and with the advice and recom-
6 mendation of the occupational pneumoconiosis board.
7 Compensation shall be paid therefor in the same manner
8 and at the same rate as is provided for permanent disa-
9 bility under the provisions of subdivisions (d), (e), (g),
10 (h), (i), (j), (k), (m) and (n) of the preceding sec-
11 tion of this article: *Provided*, That if it shall be deter-
12 mined by the commissioner in accordance with the facts

13 in the case and with the advice and recommendation of
14 the occupational pneumoconiosis board that an employee
15 has occupational pneumoconiosis, but without measurable
16 pulmonary impairment therefrom, such employee shall
17 be awarded and paid twenty weeks of benefits at the same
18 benefit rate as hereinabove provided.

19 If the employee dies from occupational pneumoconiosis,
20 the benefits shall be as provided for in section ten of this
21 article; as to such benefits sections eleven to fourteen,
22 inclusive, of this article shall apply.

23 In cases of permanent disability or death due to occu-
24 pational pneumoconiosis, as defined in section one of this
25 article, accompanied by active tuberculosis of the lungs,
26 compensation shall be payable as for disability or death
27 due to occupational pneumoconiosis alone.

28 The provisions of section sixteen, article four and
29 sections one-a, one-b, one-c and one-d, article five of this
30 chapter providing for the further adjustment of claims
31 shall be applicable to the claim of any claimant who re-
32 ceives a permanent partial disability award for occupa-
33 tional pneumoconiosis.

**§23-4-7. Release of medical information to employer; legisla-
tive findings; effect of application for benefits; duty
of employer.**

1 (a) The Legislature hereby finds and declares that two
2 of the primary objectives of the workmen's compensation
3 system established by this chapter are to provide bene-
4 fits to an injured claimant promptly and to effectuate his
5 return to work at the earliest possible time; that the
6 prompt dissemination of medical information to the com-
7 missioner and employer as to diagnosis, treatment and
8 recovery is essential if these two objectives are to be
9 achieved; that claimants are increasingly burdened with
10 the task of contacting their treating physicians to request
11 the furnishing of detailed medical information to the
12 commissioner and their employers; that the commissioner
13 is increasingly burdened with the administrative respon-
14 sibility of providing copies of medical reports to the

15 employer involved, whereas in other states the employer
16 can obtain the necessary medical information direct from
17 the treating physician; that much litigation is occasioned
18 in this state because of a lack of medical information
19 having been received by the employer as to the continuing
20 disability of a claimant; and that detailed narrative re-
21 ports from the treating physician are often necessary in
22 order for the commissioner, the claimant's representatives
23 and the employer to evaluate a claim and determine
24 whether additional or different treatment is indicated.

25 (b) In view of the foregoing findings, on and after the
26 effective date of this section, a claimant shall irrevocably
27 agree by the filing of his application for benefits that any
28 physician may release, to the claimant's employer or its
29 representative, from time to time to such claimant's em-
30 ployer medical reports containing detailed information as
31 to the claimant's condition, treatment, prognosis and
32 anticipated period of disability and dates as to when
33 the claimant will reach or has reached his maximum de-
34 gree of improvement or will be or was released to return
35 to work. Whenever a copy of any such medical report is
36 obtained by the employer or their representative and the
37 physician has not also forwarded a copy of the same to
38 the commissioner, the employer shall forward a copy of
39 such medical report to the commissioner within ten days
40 from the date such employer received the same from
41 such physician.

**§23-4-8c. Occupational pneumoconiosis board—Reports and
distribution thereof; presumption; findings re-
quired of board; objection to findings; procedure
thereon.**

1 (a) The occupational pneumoconiosis board, as soon
2 as practicable, after it has completed its investigation,
3 shall make its written report, to the commissioner, of its
4 findings and conclusions on every medical question in
5 controversy, and the commissioner shall send one copy
6 thereof to the employee or claimant and one copy to the
7 employer, and the board shall also return to and file
8 with the commissioner all the evidence as well as all

9 statements under oath, if any, of the persons who ap-
10 pear before it on behalf of the employee or claimant,
11 or employer and also all medical reports and X-ray
12 examinations produced by or on behalf of the employee
13 or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased
15 employee has been exposed to the hazard of inhaling
16 minute particles of dust in the course of and resulting
17 from his employment for a period of ten years during
18 the fifteen years immediately preceding the date of his
19 last exposure to such hazard and that such claimant or
20 deceased employee has sustained a chronic respiratory
21 disability, then it shall be presumed that such claimant
22 is suffering or such deceased employee was suffering at
23 the time of his death from occupational pneumoconiosis
24 which arose out of and in the course of his employment.
25 This presumption shall not be conclusive.

26 (c) The findings and conclusions of the board shall
27 set forth, among other things, the following:

28 (1) Whether or not the claimant or the deceased em-
29 ployee has contracted occupational pneumoconiosis, and,
30 if so, the percentage of permanent disability resulting
31 therefrom.

32 (2) Whether or not the exposure in the employment
33 was sufficient to have caused the claimant's or deceased
34 employee's occupational pneumoconiosis or to have per-
35 ceptibly aggravated an existing occupational pneu-
36 moconiosis, or other occupational disease.

37 (3) What, if any, physician appeared before the board
38 on behalf of the claimant or employer, and what, if any,
39 medical evidence was produced by or on behalf of the
40 claimant or employer.

41 If either party objects to the whole or any part of
42 such findings and conclusions of the board, he shall file
43 with the commissioner, within fifteen days from receipt
44 of such copy to him, unless for good cause shown, the
45 commissioner extends such time, his objections thereto

46 in writing, specifying the particular statements of the
47 board's findings and conclusions to which he objects.
48 After the time has expired for the filing of objections to
49 the findings and conclusions of the board, the commis-
50 sioner shall proceed to act as provided in this chapter.
51 If after the time has expired for the filing of objections
52 to the findings and conclusions of the board no objections
53 have been filed, the report of a majority of the board
54 of its findings and conclusions on any medical question
55 shall be taken to be plenary and conclusive evidence of
56 the findings and conclusions therein stated. If objection
57 has been filed to the findings and conclusions of the
58 board, notice thereof shall be given to the board, and
59 the members thereof joining in such findings and con-
60 clusions shall appear at the time fixed by the commis-
61 sioner for the hearing to submit to examination and
62 cross-examination in respect to such findings and con-
63 clusions. At such hearing, evidence to support or con-
64 trovert the findings and conclusions of the board shall
65 be limited to examination and cross-examination of the
66 members of the board, and to the taking of testimony of
67 other qualified physicians and roentgenologists.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational
2 pneumoconiosis or other occupational disease, suffered
3 by an employee in the course of and resulting from his
4 employment, causes death, and disability is continuous
5 from date of such injury until date of death, or if death
6 results from occupational pneumoconiosis or from any
7 other occupational disease, the benefits shall be in the
8 amounts and to the persons as follows:

9 (a) If there be no dependents, the disbursements
10 shall be limited to the expense provided for in sections
11 three and four of this article.

12 (b) If there be dependents as defined in subdivision
13 (d) of this section, such dependents shall be paid for
14 as long as their dependency shall continue in the same
15 amount as was paid or would have been paid the de-
16 ceased employee for total disability had he lived. The

17 order of preference of payment and length of depen-
18 dence shall be as follows:

19 (1) A dependent widow or widower until death or
20 remarriage of such widow or widower, and any child
21 or children dependent upon the decedent until each
22 such child shall reach eighteen years of age or where
23 such child after reaching eighteen years of age continues
24 as a full-time student in an accredited high school, col-
25 lege, university, business or trade school, until such
26 child reaches the age of twenty-five years or if an
27 invalid child to continue as long as such child remains
28 an invalid. All such persons shall be jointly entitled to
29 the amount of benefits payable as a result of employee's
30 death.

31 (2) A wholly dependent father or mother until death.

32 (3) Any other wholly dependent person for a period
33 of six years after the death of the deceased employee.

34 (c) If the deceased employee leaves no wholly de-
35 pendent person, but there are partially dependent per-
36 sons at the time of death, the payment shall be fifty
37 dollars a month, to continue for such portion of the
38 period of six years after the death, as the commissioner
39 may determine, but no such partially dependent person
40 shall receive compensation payments as a result of the
41 death of more than one employee.

42 Compensation under subdivisions (b) and (c) hereof
43 shall, except as may be specifically provided to the con-
44 trary therein, cease upon the death of the dependent,
45 and the right thereto shall not vest in his or her estate.

46 (d) Dependent, as used in this chapter, shall mean
47 a widow, widower, child under eighteen years of age,
48 or under twenty-five years of age when a full-time
49 student as provided herein, invalid child or posthumous
50 child, who, at the time of the injury causing death, is
51 dependent in whole or part for his or her support upon
52 the earnings of the employee, stepchild under eighteen
53 years of age, or under twenty-five years of age when a
54 full-time student as provided herein, child under eigh-

55 teen years of age legally adopted prior to the injury
56 causing death, or under twenty-five years of age when
57 a full-time student as provided herein, father, mother,
58 grandfather or grandmother, who at the time of the
59 injury causing death, is dependent in whole or in part
60 for his or her support upon the earnings of the employee;
61 and invalid brother or sister wholly dependent for his
62 or her support upon the earnings of the employee at
63 the time of the injury causing death.

64 (e) If a person receiving permanent total disability
65 benefits dies from a cause other than a disabling injury
66 leaving any dependents as defined in subdivision (d) of
67 this section, a lump sum payment shall be made to such
68 dependents in an amount equal to one hundred four
69 times the weekly benefit the worker was receiving at
70 the time of his death.

**§23-4-16. Commissioner's jurisdiction over case continuous;
modification of finding or order; time limitation
on awards; reimbursement of claimant for ex-
penses.**

1 The power and jurisdiction of the commissioner over
2 each case shall be continuing and he may from time to
3 time, after due notice to the employer, make such modi-
4 fications or changes with respect to former findings or
5 orders as may be justified: *Provided*, That no further
6 award may be made in fatal cases arising after March
7 seventh, one thousand nine hundred twenty-nine, except
8 within two years after the death of the employee, or in
9 case of nonfatal injuries, on and after March seventh,
10 one thousand nine hundred twenty-nine, except within
11 five years after payments for temporary disability shall
12 have ceased or not more than two times within five years
13 after the commissioner shall have made the last payment
14 in the original award or any subsequent increase thereto
15 in any permanent disability case: *Provided, however*,
16 That no such modification or change may be made in
17 any case in which no award has been made, except within
18 five years after the date of injury: *Provided further*, That
19 a further award may be made for medical benefits only

20 at any time. In any case in which an injured employee
21 shall make application for a further adjustment of his
22 claim, if such application be in writing and filed within
23 the applicable time limit as prescribed herein, the com-
24 missioner shall pass upon and determine the merits of
25 such application within thirty days after the filing
26 thereof.

27 If such application is based on a report of any medical
28 examination made of the claimant and submitted by the
29 claimant to the commissioner in support of his applica-
30 tion, and the claim is opened for further consideration
31 and additional award is later made, the claimant shall
32 be reimbursed for the expenses of such examination.
33 Such reimbursement shall be made by the commissioner
34 to the claimant, in addition to all other benefits awarded,
35 upon due proof of the amount thereof being furnished
36 the commissioner by the claimant, but shall in no case
37 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.

1 For the relief of persons who are receiving benefits
2 pursuant to a permanent total disability award in
3 amounts less than two hundred seventy-four dollars
4 per month, and for the relief of widows who are re-
5 ceiving benefits on account of the death of an employee
6 in amounts less than two hundred sixty dollars per
7 month, and for the relief of children of employees de-
8 ceased before one thousand nine hundred sixty-seven,
9 who are under the age of twenty-three and who are
10 full-time students, and for the relief of other persons
11 who are receiving dependents' benefits on account of
12 the death of an employee in amounts less than the
13 specific monetary amounts set forth in section ten,
14 article four of this chapter and in effect as of July one,
15 one thousand nine hundred seventy-three, there is hereby
16 created a separate fund to be known as the "Disabled

17 Workmen's Relief Fund," which fund shall consist of
18 such sums as are from time to time made available to
19 carry out the objects and purposes of this article. Said
20 fund shall be in the custody of the state treasurer and
21 disbursements therefrom shall be made upon requisition
22 signed by the commissioner to those persons entitled to
23 participate therein and in such amounts to each par-
24 ticipant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's
2 relief fund, an individual must be receiving workmen's
3 compensation benefits by virtue of and under the laws
4 of this state in amounts less than those set forth in
5 section one of this article, and be receiving such benefits
6 under a permanent total disability award or be receiving
7 such benefits because of the death of an employee: *Pro-*
8 *vided*, That a child of an employee deceased before the
9 first day of July, one thousand nine hundred sixty-seven,
10 who is under the age of twenty-three and is a full-time
11 student, and, who, at the time of injury causing death,
12 was dependent in whole or part upon the earnings of
13 the deceased employee, shall be eligible for benefits
14 payable from the fund established by this article in the
15 same manner and amount as if death had occurred after
16 the first day of July, one thousand nine hundred sixty-
17 seven.

ARTICLE 5A. DISCRIMINATORY PRACTICES.

§23-5A-1. Discriminatory practices prohibited.

1 No employer shall discriminate in any manner against
2 any of his present or former employees because of such
3 present or former employee's receipt of or attempt to
4 receive benefits under this chapter.

CHAPTER 109

(H. B. 914—By Mrs. James)

[Passed February 17, 1978; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County to convey a parcel of county owned land to the Jefferson County Fair Association, Inc., reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.**§1. County commission authorized to convey land to the Jefferson County Fair Association, Inc.**

1 The Legislature hereby recognizes that an adequate site
2 is necessary for the citizens of Jefferson County to conduct
3 a county fair to enable youth and adults to exhibit livestock,
4 horticultural products, agricultural products and home eco-
5 nomics skills. Accordingly, the Legislature hereby finds and
6 declares that transfers of any property, real or personal,
7 made by county commissions to any person, organization or
8 corporation for the furtherance of such activities promotes
9 the cultural and educational welfare of the public and, there-
10 fore, is a public purpose.

11 The county commission of Jefferson County is hereby
12 authorized and empowered to transfer and convey into the
13 Jefferson County Fair Association, Inc., all that certain parcel
14 of land situated within Middleway district of Jefferson County,
15 West Virginia, east of Leetown on the north side of West
16 Virginia state secondary Route No. 15, approximately two
17 thousand two hundred thirty feet west of the intersection of
18 West Virginia state secondary Route No. 15 with West Vir-
19 ginia state secondary Route No. 8, more particularly bounded
20 and described as:

21 Beginning at a railroad spike in the northeastern
22 right-of-way line of state secondary Route No. 15 and

23 in the division line between the lands of the Jefferson
 24 County Volunteer Fireman's Association land and the
 25 parcel herein described; thence, with said right-of-way
 26 line, N51-12-23E, 550.00 feet, to an iron pin; thence,
 27 leaving said right-of-way line, N28-48-15E, 1,263.46
 28 feet to an iron pin in the southwestern line of a lane;
 29 thence, with said lane, S65-00E, 550.00 feet to a post in
 30 the aforementioned line of the Jefferson County Volunteer
 31 Fireman's Association land; thence, with said line S29-
 32 05-49W, 1,395.37 feet (passing through a post at
 33 1,374.42 feet) to the place of beginning and containing
 34 16.64 acres, more or less.

35 Any proper conveyance made by the county commission
 36 of Jefferson County transferring ownership for the above
 37 described parcel into the Jefferson County Fair Association,
 38 Inc., shall contain a provision that ownership of such property
 39 shall revert to the county commission should the land cease
 40 to be used as a fairgrounds.

CHAPTER 110

(H. B. 1634—By Mr. Martin and Mr. Caudle)

[Passed March 1, 1978; in effect from passage. Approved by the Governor.]

AN ACT to authorize the purchase and financing of certain real estate in Cacapon District for public purposes by the county commission of Morgan County.

Be it enacted by the Legislature of West Virginia:

MORGAN COUNTY LANDFILL.

§1. Morgan County commission authorized to purchase certain real property for use by the county and to finance said purchase.

1 The county commission of Morgan County is hereby
 2 authorized to make provisions in its budget and to expend

- 3 \$45,050.00 of county funds for the purchase of a certain un-
4 improved tract situate in Cacapon District of Morgan County,
5 West Virginia, bounded and described as follows:
- 6 Beginning at corner number seven "A" of the recent forty
7 acre conveyance (Ashelman to Morgan County) being in
8 the line of Tract 23 Red Barn Subdivision, thence with
9 the line of said Tract 23, S 55 degrees -18'-42" E 75.03
10 feet to
- 11 (8) a Bathey T-Bar (found) thence S 85 degrees -00'-55" E
12 (passing a Bathey T-Bar at 150 feet) 414.06 feet to
- 13 (9) a Bathey T-Bar (found) thence S 64 degrees -28'-29" E
14 394.18 feet to
- 15 (10) a Bathey T-Bar (found) corner to Tracts 24 & 25 of
16 said subdivision, thence N 78 degrees -32'-32" E 132.02
17 feet to
- 18 (11) a Bathey T-Bar (found) thence S 71 degrees -28'-01" E
19 368.63 feet to
- 20 (12) a Bathey T-Bar (found) thence S 20 degrees -15'-11" W
21 763.4 feet to
- 22 (13) a Bathey T-Bar (found) a corner to H. Whisner and
23 being a corner of Parcel one and a corner to Parcel two
24 (D. B. 69 Pg. 536 Ashelman) thence with Whisner S 71
25 degrees -23'-47" E 940 feet to
- 26 (14) a dead white oak (found) a corner to Holliday and
27 Whisner (also a corner of Parcel three, D.B. 69 Pg. 536)
28 thence with Holliday S 27 degrees -53'-36" W (400 feet
29 to a number five rebar and another at 800 feet) 1363.41
30 feet to
- 31 (15) a number five rebar (set) in the line of Holliday thence
32 with a new division line into the lands of which this is
33 a part (first crossing Parcel three, then Parcel two
34 aforesaid) 47 degrees -45'-49" W 2661.89 feet to
- 35 (7B) a number five rebar (found) corner to the forty acres
36 aforesaid, thence with same N 42 degrees -14'-11" E

- 37 1023.58 feet to the place of beginning, containing 73 +/-
38 acres.
- 39 Subject to a right-of-way, reserved by Ashelman, forty feet
40 wide, beginning at a corner Chestnut Oak (Double) and
41 stone pile approximately thirty feet N.W. of West Vir-
42 ginia Sect. Rt. 9/17, a corner to the Holliday heirs,
43 thence with an old logging road, N 12 degrees -23'-39"
44 E 125.9'
- 45 thence N 23 degrees -26'-19" E 304.94'
- 46 thence N 25 degrees -34'-39" E 206.21'
- 47 thence N 16 degrees -55'-39" E 206.85'
- 48 thence N 14 degrees -11'-19" E 218.61'
- 49 thence N 20 degrees -32'-29" E 229.54'
- 50 thence N 17 degrees -29'-59" E 168.42'
- 51 thence N 09 degrees -14'-51" W 154.66' an intersection
- 52 thence N 50 degrees -14'-31" W 145.13'
- 53 thence N 57 degrees -28'-11" W 95.47'
- 54 thence W 75 degrees -23'-11" W 269.56' to beside an old,
55 large blazed White Oak
- 56 thence N 89 degrees -00'-00" W crossing the division line.
- 57 And being a part of the lands conveyed to Margaret Ashelman,
58 as recorded in Deed Book 69 at Page 536 in the office of
59 the clerk of the county commission of Morgan County, at
60 Berkeley Springs, West Virginia, to which reference is herein
61 made for further particulars.
- 62 The tract is to be used as a sanitary landfill and for other
63 public purposes.
- 64 The county commission of Morgan County is further autho-
65 rized to finance the purchase of said real estate over a period
66 not to exceed ten years, and to execute a lien thereon to secure
67 payment of said purchase price.

CHAPTER 111

(Com. Sub. for H. B. 1604—By Mr. Caudle and Mr. Martin)

[Passed March 10, 1978; in effect from passage. Approved by the Governor.]

AN ACT authorizing and directing the West Virginia Board of Regents to offer for sale at a specified price and to convey, if sold, unto the town of Shepherdstown a parcel of Shepherd College's property known as Rumsey Hall. Provision is made for reversion, sale and reconveyance back to the Board of Regents at said specified price whenever the property would cease to be used for the specified purposes.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA BOARD OF REGENTS AUTHORIZED AND DIRECTED TO SELL LAND AT SPECIFIED PRICE.

§1. Sale and conveyance of land to Shepherdstown for historic preservation; specified price; reversion.

1 The West Virginia board of regents is hereby authorized
2 and directed to offer for sale to, and, if sold, to convey unto
3 the town of Shepherdstown, for the sum of one dollar, a parcel
4 of land approximately 95 by 130 feet square located
5 on the northeast corner of German and Princess Streets in
6 Shepherdstown, containing a thirty-two room brick structure
7 with two entrances on German Street known as Rumsey Hall,
8 of the lands comprising Shepherd College. The exact location
9 and dimension of such parcel shall be as agreed by the board
10 of regents and the town of Shepherdstown and the parcel
11 chosen shall be properly surveyed and a copy of such survey
12 incorporated into the records of Jefferson County.

13 Such parcel shall be utilized by the town of Shepherdstown
14 to fulfill the community's needs for senior citizens' programs,
15 health programs, museums, library services or other public
16 and civic services and activities.

17 If such parcel cease to be used for the purposes designated
18 herein, it shall revert, be sold and reconveyed to the said board
19 of regents upon payment of the specified consideration of one
20 dollar by such board.

CHAPTER 112

(H. B. 1241—By Mr. Morasco)

[Passed February 24, 1978; in effect from passage. Approved by the Governor.]

AN ACT to reform, alter and modify the county commission of Taylor County under the provisions of section thirteen, article nine of the constitution of this state.

Be it enacted by the Legislature of West Virginia:

TAYLOR COUNTY COMMISSION.

- §1. Legislative findings.
- §2. Reformation, alteration and modification of Taylor County commission; composition; quorum, application of laws.
- §3. Election of commissioners; terms; exception.
- §4. Submission to voters of question of reformation, alteration and modification of county commission.

§1. Legislative findings.

1 The Legislature hereby finds and declares that, by a petition
 2 dated the seventh day of March, one thousand nine hundred
 3 seventy-seven, at least ten percent of the registered voters of
 4 Taylor County have requested the reformation, alteration and
 5 modification of the county commission of said county so that
 6 the number of members of said county commission shall be
 7 equal to the number of magisterial districts comprising said
 8 county. The Legislature further finds and declares that, by a
 9 letter dated the eleventh day of March, one thousand nine
 10 hundred seventy-seven, said county commission has requested
 11 the Legislature to so reform, alter and modify the same, as
 12 required by the provisions of section thirteen, article nine
 13 of the constitution of this state. The Legislature further finds
 14 and declares that it fulfills the requirements of said section
 15 thirteen by the provisions of this act.

§2. Reformation, alteration and modification of Taylor County commission; composition; quorum; application of laws.

1 The county commission of Taylor County is hereby re-
 2 formed, altered and modified such that there shall be three
 3 commissioners and each commissioner shall be elected by the

4 voters of his magisterial district as provided in this act. A
5 simple majority of said commissioners shall be a quorum for
6 the transaction of business. All laws of this state not incon-
7 sistent with the provisions of this act shall apply to said
8 county commission.

§3. Election of commissioners; terms; exception.

1 At the general election to be held in the year one thousand
2 nine hundred eighty, there shall be elected by the voters of
3 each magisterial district a commissioner of the Taylor County
4 commission: *Provided*, That such election shall not apply to
5 those magisterial districts represented by a commissioner, as
6 of the effective date of this act, whose term of office would,
7 notwithstanding the provisions of this act, not be subject to
8 election in said year. The terms of the commissioners so elected
9 shall begin on the first day of January, one thousand nine hun-
10 dred eighty-one, and shall be for six years, except that at the
11 first meeting of the county commission following such election
12 the commissioners so elected shall designate by lot, or otherwise
13 in such manner as they may determine, one of their number,
14 who shall hold his office for a term of two years, not less than
15 one for four years, and one for six years, so that not less than
16 one shall be elected every two years.

17 The commissioners of said county commission in office on
18 the effective date of this act shall remain therein for the term
19 for which they have been elected, unless sooner removed
20 therefrom in the manner prescribed by law, and shall be
21 eligible to succeed themselves for six-year terms.

§4. Submission to voters of question of reformation, alteration and modification of county commission.

1 At the primary election to be held in the year one thousand
2 nine hundred eighty, the question of the reformation, altera-
3 tion and modification of the county commission as provided
4 in this act shall be submitted to the voters of Taylor County
5 voting at such election. Such question shall be so submitted
6 on a separate ballot furnished by the county commission, in
7 the following form:

- 8 "For modification of county commission
- 9 Against modification of county commission .
- 10 If a majority of the votes cast upon the question be "for
11 modification for county commission," this act shall be and
12 remain in full force and effect; but if a majority of such votes
13 cast be "against modification of county commission," this act
14 shall be of no further force and effect.

CHAPTER 113

(S. B. 490—By Mr. McGraw)

[Passed March 9, 1978; in effect from passage. Approved by the Governor.]

AN ACT authorizing the Wyoming County commission to convey to the Little Huff Creek Health Association, Inc., a parcel of real estate situated in Huff Creek district of Wyoming County so long as such property shall be used for the purpose of providing medical services to children in the public schools of said county.

Be it enacted by the Legislature of West Virginia:

LITTLE HUFF CREEK HEALTH ASSOCIATION.

§1. Wyoming County commission to convey real estate to Little Huff Creek Health Association, Inc., for so long as it is used for school children's medical services purposes.

1 The county commission of Wyoming County is hereby
2 authorized to convey to the Little Huff Creek Health
3 Association, Inc., a parcel of real estate situated in Huff
4 Creek district, Wyoming County, West Virginia, and being
5 more particularly bounded and described as follows, to
6 wit:

7 Beginning at an iron spike near a culvert on the west
8 side of US 52 and being the northeast corner of the
9 Wyoming County board of education property; proceed-

10 ing thence with US 52 S 15 degrees 09' E 150.0 feet to an
11 iron pipe; thence leaving the US 52 right-of-way S 79
12 degrees 10' W 224.38 feet to a roof bolt; thence S 79
13 degrees 10' W 34.0 feet to a point in Little Huff Creek;
14 thence N 1 degree 13' W 151.70 feet to a point in Little
15 Huff Creek; thence N 79 degrees 10' E 30 feet to a one
16 inch iron pipe; thence N 79 degrees 10' E 191.94 feet to
17 the point of beginning, and containing 0.85 acres, more
18 or less, as shown on a map attached hereto and made
19 a part hereof, and being more particularly designated
20 as follows: "Plat of survey showing 0.85 acre tract to be
21 conveyed to the Wyoming County commission by the
22 Wyoming County board of education situate on the
23 waters of Little Huff Creek on the west side of US
24 Route 52, Huff Creek district, Wyoming County, West
25 Virginia, scale: 1" = 100'. Date: October 31, 1977. Sur-
26 vey prepared by: David E. Jackson, L.L.S., P. O. Box
27 456, Pineville, West Virginia, 24874"; and being the
28 same property conveyed by the Wyoming County board
29 of education to the Wyoming County commission by
30 deed of record in the office of the clerk of the county
31 commission of Wyoming County, West Virginia, in
32 deed book 311, page 566, reference to which deed is
33 hereby made for a more particular description of the
34 property hereby authorized to be conveyed and for
35 reference to the restrictions thereon.

36 Said property shall be conveyed subject to those terms
37 and conditions set forth in that certain deed recorded in
38 the office of the clerk of the Wyoming County commission
39 in deed book No. 311, page 566. Said conveyance is here
40 authorized for the express purpose of providing a medical
41 service program for the benefit of the public school chil-
42 dren in Wyoming County and more particularly for the
43 benefit of the public school children in Huff Creek dis-
44 trict. Should said real estate cease to be used as required
45 in the deed from the Wyoming County board of education
46 to the Wyoming County commission as set forth by the
47 deed recorded in deed book 311, page 566, then title to
48 said real estate shall revert automatically to the Wyoming
49 County board of education.

RESOLUTIONS

SENATE JOINT RESOLUTION NO. 4

(By Mr. Nelson and Mr. Palumbo)

[Adopted February 15, 1978.]

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 all the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia 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-eight, which proposed amendment is that section ten, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§10. School levy and bond amendment.

1 Notwithstanding any other provision of the constitution
2 to the contrary, the maximum rates authorized and allocated
3 by law for tax levies on the several classes of property for the
4 support of public schools may be increased in any school
5 district for a period not to exceed five years, and in an
6 amount not to exceed one hundred percent of such maximum
7 rates, if such increase is approved, in the manner provided by
8 law, by at least a majority of the votes cast for and against
9 the same.

10 Notwithstanding any other provision of the constitution
11 to the contrary, the maximum rates provided for tax levies

12 by school districts on the several classes of property may be
 13 used entirely for current expense purposes; and all levies
 14 required for principal and interest payments on any bonded
 15 indebtedness, now or hereafter contracted, not to exceed
 16 five per centum on the value of the taxable property there-
 17 in, the value to be ascertained in accordance with section
 18 eight of this article, shall be laid separate and apart and
 19 in addition to such maximum rates, but in the same propor-
 20 tions as such maximum rates are levied on the several classes
 21 of property.

22 Notwithstanding the provisions of section eight of this
 23 article relating to a vote of the people or any other pro-
 24 visions of this constitution, a county board of education
 25 may contract indebtedness and issue bonds for public school
 26 purposes as provided by law, if, when submitted to a vote
 27 of the people of the county, in the manner provided by
 28 law, the question of contracting indebtedness and issuing
 29 bonds is approved by a majority of the votes cast for and
 30 against the same.

31 *Resolved further*, That in accordance with the provisions
 32 of article eleven, chapter three of the code of West Virginia,
 33 one thousand nine hundred thirty-one, as amended, such pro-
 34 posed amendment is hereby numbered "Amendment No. 1"
 35 and designated as the "School Levy and Bond Amendment,"
 36 and the purpose of the proposed amendment is summarized as
 37 follows: "To amend the State Constitution to permit county
 38 school levies, indebtedness and bonds to be approved by a
 39 simple majority of the votes cast for and against the same."

HOUSE CONCURRENT RESOLUTION NO. 8

(By Mr. Brenda, Mr. Donley, Mr. Gvoyich, Miss Shuman,
 Mr. Otte, Mr. Tighe, Mrs. Blatnik, Mr. Karras,
 Mr. Wiedebusch, Mr. Yanni, Mr. Ballouz and Mr. Swann)

[Adopted February 6, 1978.]

Urging the State of West Virginia and the United States Govern-
 ment to use only steel produced in the United States for con-
 struction projects.

WHEREAS, Follansbee Steel, National Steel, and Wheeling-Pittsburgh Steel are native companies suffering from the importation of foreign steel into the United States; and

WHEREAS, State and national employment and revenues are reduced due to competition with foreign produced steel; and

WHEREAS, The subsequent unemployment of persons employed in areas pertaining to the steel industry would involve additional cost to the state and federal governments; therefore, be it

Resolved by the Legislature of West Virginia:

That the State of West Virginia and the United States Government be urged to only use steel produced in the United States for construction projects; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to forward a copy of this resolution to the Governor, West Virginia's Congressional Delegation, Follansbee Steel Company, National Steel Company, and Wheeling-Pittsburgh Steel Company.

HOUSE CONCURRENT RESOLUTION NO. 19

(By Mr. Tomblin and Mr. Hendricks)

[Adopted February 17, 1978.]

Requesting the Governor and the Department of Highways to place a high priority upon an early completion of the Corridor G Highway in the southern part of the State.

WHEREAS, The southern counties of the State which would be served by the Corridor G Highway is an area of rugged terrain through which present roads and highways are inadequate for today's transportation needs in the area; and

WHEREAS, The area which would be served by the Corridor G Highway is one of the fastest developing areas in the State and is also the center of coal production of the State which is one of the State's most precious natural resources and is essential to the economy of this State; and

WHEREAS, The Corridor G Highway will serve as a vital transportation link between the southern counties of the State served thereby and the rest of the State and the nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Governor and the Department of Highways are hereby requested to place a high priority upon an early completion of the Corridor G Highway in the southern part of the State; and, be it

Further Resolved, That the Clerk's of the House and the Senate send copies of this resolution to the Governor and the Department of Highways.

HOUSE CONCURRENT RESOLUTION NO. 23

(By Mr. Harman and Mr. See)

[Adopted February 20, 1978.]

Urging the United States Congress to oppose the proposed Fisher-Mathias legislation, which provides for the establishment and administration of a Potomac River Shoreline Area for the preservation of portions of the main stem of the Potomac River and adjacent land areas in Maryland, Virginia and West Virginia.

WHEREAS, Proposed congressional legislation introduced by Senators Joseph L. Fisher and Charles M. Mathias, Jr. establishes a 22-member Potomac River Shoreline Area Commission to be appointed by local governmental bodies in Maryland, Virginia, West Virginia, the District of Columbia and various federal agencies who would be given two years to develop a plan providing for the establishment and administration of a Potomac River Shoreline Area; and

WHEREAS, The Commission would have the authority to regulate the use of areas generally bordering the Potomac River from Cumberland, Maryland, to the District of Columbia, with no mention as to how far back from the river banks the control would extend; and

WHEREAS, The proposed legislation stipulates that the four West Virginia members of the Commission shall not be employed by any office, agency or governing body of the State and provides no such restriction on the four members to be appointed from either Maryland or Virginia; and

WHEREAS, There are already sufficient state and federal laws and regulations that provide for the protection and regulation of the Potomac River and its bordering area; therefore, be it

Resolved by the Legislature of West Virginia:

That the United States Congress be urged to oppose the proposed Fisher-Mathias legislation, presently under congressional consideration, providing for the establishment and administration of a Potomac River Shoreline Area for the preservation of portions of the main stem of the Potomac River and adjacent land areas in Maryland, Virginia and West Virginia; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States and this State's congressional delegation.

HOUSE CONCURRENT RESOLUTION NO. 54

(Originating in the House Committee on Rules)

[Adopted March 11, 1978.]

Extending this the second regular session of the Sixty-third Legislature of West Virginia.

WHEREAS, Section twenty-two, article six of the West Virginia Constitution provides that any regular session of the West Virginia Legislature may be extended by the concurrence of two thirds of the members elected to each house; and

WHEREAS, The Legislature desires to extend this the second regular session of the Sixty-third Legislature for the consideration of conference reports on bills in conference on the eleventh day of March, one thousand nine hundred seventy-eight, and for the reconsideration of any bills disapproved or vetoed by the Governor; therefore, be it

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That this the second regular session of the Sixty-third Legislature

of West Virginia is hereby extended through and until midnight, the fourteenth day of March, one thousand nine hundred seventy-eight, for the sole consideration of bills in conference on the eleventh day of March, one thousand nine hundred seventy-eight, and for the reconsideration of any bills disapproved or vetoed by the Governor.

SENATE CONCURRENT RESOLUTION NO. 5

(By Mr. Fanning, Mr. Ward and Mr. McGraw)

[Adopted January 26, 1978.]

Calling upon the Congress to enact legislation and appropriate funds to construct dams and flood control projects in southern West Virginia.

WHEREAS, The report of the Citizens Committee on Flood Cause and Prevention has been received by this Legislature; and

WHEREAS, This committee, authorized by West Virginia Senate Concurrent Resolution No. 36, 1977, regular session, was directed to report to the Legislature with recommendations that would alleviate the hazards of future flooding in southern West Virginia; and

WHEREAS, The report of this Citizens Committee lists, as its first major recommendation, the need for Congress to enact legislation, authorize and provide funding for the construction of dam projects on the Tug River and of flood control projects in all of southern West Virginia; and

WHEREAS, The April, 1977 flood in southern West Virginia has already resulted in over \$90 million in federal expenditures alone for various flood recovery efforts; and

WHEREAS, There will almost surely be another tremendous and devastating flood in southern West Virginia if a dam construction program is not begun and completed soon; and

WHEREAS, It is economically unwise for the federal government to continue to expend huge amounts in recovery efforts, and for state and local governments, and disaster victims, to supplement this federal expenditure with additional recovery and property loss costs, when the amounts spent to recover from the April flood alone

would be more than sufficient to construct a main-stream dam on the Tug River, as well as other brick-and-mortar flood control projects in the Tug and Guyandotte River basins; therefore, be it

Resolved by the Legislature of West Virginia:

That this Legislature hereby petitions, memorializes and calls upon Congress to enact pending legislation relating to flood control projects and the cost-benefit standards relating thereto, and to authorize and fund the construction of dams and flood control projects in southern West Virginia; and, be it

Further Resolved, That the Clerk of the Senate forward a copy of this resolution to this State's congressional delegation, the President of the United States, and the Chief of the U. S. Army Corps of Engineers.

SENATE CONCURRENT RESOLUTION NO. 27

(Originating in the Committee on Natural Resources)

[Adopted March 10, 1978.]

Directing the Joint Committee on Government and Finance to conduct a study of requirements necessary for State adoption and implementation of the regulatory provisions of the federal surface Mining Control and Reclamation Act of 1977.

WHEREAS, The federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) provides for the regulation and control of surface coal mining operations for the protection of the environment; and

WHEREAS, Section 503 of the Act requires that a state desiring to assume regulatory authority under the Act must submit to the Secretary of the Interior, by February 3, 1979, a program which demonstrates that such state has the capability of carrying out the provisions of the Act; and

WHEREAS, Although the surface mining control and reclamation laws of this State are in the forefront of states' laws nationally, substantial changes in those laws will be required in order to achieve compliance with the provisions of the Act, and the rules and reg-

ulations promulgated thereunder, and to ensure assumption by this State of the required regulatory program; and

WHEREAS, A legislative study of the necessary changes in this State's laws, in cooperation with the Department of Natural Resources, is absolutely essential to ensure proper development of this State's regulatory program in response to the February, 1979, deadline contained in the Act; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a study of requirements necessary for State adoption and implementation of the regulatory programs contained in the federal Surface Mining Control and Reclamation Act of 1977; and, be it

Further Resolved, That the Joint Committee shall coordinate its efforts with the Department of Natural Resources and shall, if necessary, meet with officials of the Office of Surface Mining Reclamation and Enforcement of the U. S. Department of the Interior; and, be it

Further, Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1977, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 28

(By Mr. Brotherton, Mr. President, and Mr. Kusic)

[Adopted March 11, 1978.]

Directing the continuation of certain studies by the Joint Committee on Government and Finance.

WHEREAS, Certain studies referred to the Joint Committee on Government and Finance by prior sessions of the Legislature and

studies initiated by the Joint Committee in 1977 have not been completed and require additional study; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance continue the studies authorized by the following concurrent resolutions:

1. Senate Concurrent Resolution No. 12, regular session, 1973, and last continued by House Concurrent Resolution No. 2, first extraordinary session, 1977, relating to coal mining.

2. House Concurrent Resolution No. 34, regular session, 1972, relating to criminal laws, and House Concurrent Resolution No. 16, regular session, 1972, relating to juvenile laws, and last continued by House Concurrent Resolution No. 2, first extraordinary session, 1977.

3. Senate Concurrent Resolution No. 11, regular session, 1976, relating to employee classification, salary and benefits, and continued by House Concurrent Resolution No. 2, first extraordinary session, 1977.

4. Senate Concurrent Resolution No. 24, regular session, 1975, and last continued by House Concurrent Resolution No. 2, first extraordinary session, 1977, relating to health and social services.

5. Senate Concurrent Resolution No. 19, regular session, 1973, and last continued by House Concurrent Resolution No. 2, first extraordinary session, 1977, relating to the park system and including the study of Department of Natural Resources recreational facilities.

6. House Concurrent Resolution No. 8, first extraordinary session, 1974, and last continued by House Concurrent Resolution No. 2, first extraordinary session, 1977, relating to public safety administration.

7. House Concurrent Resolution No. 31, regular session, 1969, and last continued by House Concurrent Resolution No. 2, first extraordinary session, 1977, relating to the tax structure of West Virginia.

8. House Concurrent Resolution No. 3, first extraordinary session, 1977, relating to the following studies:

(1) Coal mine subsidence insurance

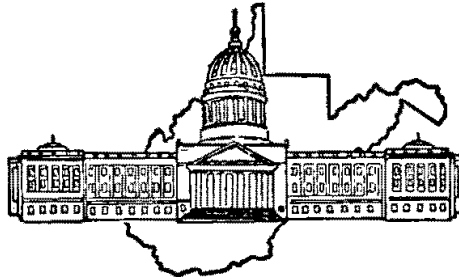
- (2) Education of handicapped children
- (3) Higher education
- (4) Public employees retirement
- (5) State building construction; and, be it

Further Resolved, That the Joint Committee on Government and Finance continue the following studies initiated by the Joint Committee in 1977:

1. Public defender system, authorized June 20, 1977, by the Joint Committee on Government and Finance.
2. Social security and sick leave for State employees, authorized November 6, 1977, by the Joint Committee on Government and Finance; and, be it

Further Resolved, That all reports, together with findings, conclusions, recommendations and any proposed drafts of legislation, be made to the Legislature at its regular session, 1979; and, be it

Further Resolved, That all provisions of said concurrent resolutions be continued in force except as modified herein.



HOUSE CONCURRENT RESOLUTION NO. 53

Originating in the House Committee on Rules and offered by
Mr. Speaker (Mr. Kopp), on behalf of the entire membership
of the West Virginia Legislature

A Resolution enrolling a memorial to an extraordinary individual and public servant, Oshel C. Parsons, Parliamentarian of the West Virginia House of Delegates.

After a brief illness, Oshel C. Parsons died on the night of

Tuesday, February 14, 1978, closing the active life and public service of an ageless and truly irreplaceable individual.

Born at Fairplain, Jackson County, May 16, 1903, he taught in the public schools in Jackson and Kanawha Counties during the years 1920 to 1924. He attended New River State College, now West Virginia Institute of Technology, in Montgomery, Fayette County, from 1923 to 1925 where he received an Associate of Arts Degree. He returned to New River State for some additional courses in the summer of 1926.

Lasting mutual affection developed between Mr. Parsons and the College and community, and Montgomery became his adopted town. He maintained his voting residence in Montgomery throughout most of his adult life, and many personal friendships matured with the townspeople. He was honored by his College as its Alumnus of the Year in 1953.

It seems unbelievable, because of his agelessness, that he began his service to the West Virginia Legislature as an Assistant Clerk of the House of Delegates as long ago as 1927. Following a brief period as a proofreader for the State Senate in 1929, he returned to the House of Delegates in 1931 where the institution, "Oshel C. Parsons, Parliamentarian of the House of Delegates," took root. It is now established forever.

Mr. Parsons' first major contribution to the West Virginia Legislature, the beginning of his chief personal commitment throughout his long service, was the reading and verification of the new codification of West Virginia's statutory laws, "the Code of West Virginia, one thousand nine hundred thirty-one," enacted on April 3, 1930, to take effect January 1, 1931. Having started with this new Code, he was dedicated to maintaining its ongoing accuracy and, thereby, reliability through the thousands of amendments enacted since 1931 to West Virginia statutes. His publications of the Acts of the Legislature of West Virginia attest to this dedication.

His second major commitment was to accuracy and orderliness for each and every official document, record and action of the House of Delegates. His House Journal became a model of completeness, with brevity, and is followed by legislative bodies in other states.

He knew that rules of parliamentary procedure, even though confusing to the novice, are essential for orderly legislative deliberation, debate and action and that chaos and gross mistakes would be inevitable without these guiding principles. Mr. Parsons defended those traditional rules that have stood the test of time and experience but was an initiator and supporter of rules and procedural changes of substance and merit.

He attended law school in Washington, D. C., for only one year early in life, but his advice on legal and Constitutional questions was sought frequently by judges, attorneys, legislators and others.

A statewide acquaintance with the judges and lawyers in West Virginia developed and many close, personal friendships have resulted since Mr. Parsons was appointed as Secretary-Treasurer of the West Virginia State Bar on June 1, 1949. He served this important arm of the West Virginia Supreme Court of Appeals with distinction until his retirement on March 31, 1971.

Among many of his singularly individual assets, Mr. Parsons kept endless information, much of it in great detail, filed away in his keen mind, ready for recall when needed. On many occasions, his accurate memory provided the only door when scholarly research or a simple inquiry had reached a dead end.

Mr. Parsons loved children and treated those whom he knew well as if they were his own.

Delightful in private conversation, stinging with truth and logic in debate, impatient with incompetence, tolerant of honest mistakes forthrightly admitted, and constant critic of governmental ineptitude wherever he found it, Oshel C. Parsons sought to protect the West Virginia Legislature from decay from within by his insistence, many times uninvited, that excellence must be sought even though not always attained and from unjustified and misinformed attacks from without by taking on the attacker head on, by personal confrontation, if the opportunity presented itself, or by letter or telephone call. Though a severe critic of some legislative activity, he tolerated no unwarranted criticism from "outsiders."

His long, dedicated and unselfish service to the West Virginia Legislature leaves a lasting memorial to Oshel C. Parsons, legislative expert, teacher, adviser, friend and constructive critic to the many

who have served since 1927 as members, officers, staff and employees of this, the State Senate and the House of Delegates.

Oshel C. Parsons, Parliamentarian of the West Virginia House of Delegates, needs no monument or plaque to recall for those who follow that, for awhile, over 50 years, he was here; therefore, be it

Resolved by the Legislature of West Virginia:

That this, the Sixty-Third Legislature of the State of West Virginia, in solemn assembly in its Regular Session 1978, do hereby enroll this memorial to an extraordinary individual and public servant for over 50 years, Oshel C. Parsons, Parliamentarian of the West Virginia House of Delegates; do by this act express the high esteem in which he was held by this Legislature; and do extend to his wife, Leona, and to his legion of friends, our sympathy and assurance that many share in this great loss; and, be it

Further Resolved, That the Clerk of the House of Delegates transmit an appropriate copy of this resolution to Mrs. Leona Parsons, his wife.

Adopted by the Legislature March 11, 1978.

W. T. BROTHERTON, JR.
President, State Senate

DONALD L. KOPP
Speaker, House of Delegates

J. C. DILLON, JR.
Clerk, State Senate

C. A. BLANKENSHIP
Clerk, House of Delegates

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1978

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