ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1978
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.
# TABLE OF CONTENTS

## ACTS AND RESOLUTIONS

### Regular Session, 1978

### GENERAL LAWS

#### ACTIONS AND SUITS

1. Actions by or Against Nonresident Persons Having Certain Contacts With This State .......................................................... 1

#### ALCOHOLIC LIQUORS

2. Classification and Compensation of Agents of the Alcohol Beverage Control Commissioner ........................................ 5

#### ANTITRUST LAW

3. Enacting an Antitrust Law .................................................. 7

#### APPROPRIATIONS

4. Annual Budget Bill, Making Appropriations Out of the Treasury for the Fiscal Year Beginning July 1, 1978 .......................... 17

   Supplementing, Amending and Transferring Amounts Between Items of Prior Appropriations

5. Attorney General .................................................................. 95

6. Pinecrest State Hospital .................................................. 96

7. Department of Public Safety ............................................. 97

8. Department of Highways from State Road Fund ................. 98

#### BANKS AND BANKING

9. Qualifications of the Deputy Commissioner of Banking ......... 99

10. Examination Fees Charged to Banks by the Department of Banking ................................................................. 100

11. Dollar-limit Requirements on Total Assets of Banks Having Representative Member on the West Virginia Board of Banking and Financial Institutions .................................................. 101

12. Minimum Capital Stock of State Chartered Banking Institutions .................................................................................. 104

#### CHARITABLE FUNDS

13. Definitions Under the Solicitation of Charitable Funds Act .... 105
# Table of Contents

## Child Welfare

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. Subsidies by the Department of Welfare for Certain Adoptive Children</td>
<td>140</td>
</tr>
</tbody>
</table>

## Claims Against the State

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Payment of Certain Claims Against Various State Departments, Boards, Offices and Agencies</td>
<td>142</td>
</tr>
<tr>
<td>17. Payment of Claims Against the Department of Health, Department of Corrections and the Department of Motor Vehicles</td>
<td>147</td>
</tr>
</tbody>
</table>

## Consumer Protection

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>18. Redefining Terms to Make West Virginia Debt Collection Laws Consistent with Federal Laws</td>
<td>149</td>
</tr>
</tbody>
</table>

## Controlled Substances

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19. Updating Lists of Controlled Substances</td>
<td>150</td>
</tr>
</tbody>
</table>

## County Commissions and Officers

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20. County Commissions to Adopt Minimum Building and Housing Code Standards</td>
<td>161</td>
</tr>
<tr>
<td>21. Establishment by County Commissions of County Information Referral Services</td>
<td>162</td>
</tr>
<tr>
<td>22. Local Option Election for Sale or Demolition of Real Property</td>
<td>163</td>
</tr>
<tr>
<td>23. Authority of County Development Authorities to Exercise Right of Eminent Domain</td>
<td>166</td>
</tr>
</tbody>
</table>

## Courts and Their Officers

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24. General Amendment to the Magistrate Court System Law</td>
<td>168</td>
</tr>
<tr>
<td>25. Terms of Court for the Fifth Judicial Circuit (Calhoun, Jackson and Roane Counties)</td>
<td>191</td>
</tr>
<tr>
<td>26. Terms of Court in the Twenty-second Judicial Circuit (Hampshire, Hardy and Pendleton Counties)</td>
<td>192</td>
</tr>
<tr>
<td>27. Terms of Court for the Twenty-fifth Judicial Circuit (Boone and Lincoln Counties)</td>
<td>192</td>
</tr>
<tr>
<td>28. Increasing Amount of Original Jurisdiction of Circuit Courts</td>
<td>193</td>
</tr>
<tr>
<td>29. Courts of Record May Adjourn or Fail to Sit up to Thirty Consecutive Days</td>
<td>194</td>
</tr>
</tbody>
</table>

## Crime, Delinquency and Correction

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>30. Designation of Governor's Committee on Crime, Delinquency and Correction as the State Planning Agency for Participation in Federal Programs</td>
<td>196</td>
</tr>
</tbody>
</table>

## Crimes and Their Punishment

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>31. Defining Assault and Battery and Prescribing Penalties</td>
<td>197</td>
</tr>
<tr>
<td>32. Definitions and Penalties for the Crime of Trespass</td>
<td>198</td>
</tr>
<tr>
<td>33. Payment by State of Transportation Costs of Bodies for Autopsy</td>
<td>202</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>34.</td>
<td>Bringing West Virginia Daylight Saving Time Law into Compliance with Federal Law</td>
</tr>
<tr>
<td><strong>DAYLIGHT SAVING TIME</strong></td>
<td></td>
</tr>
<tr>
<td>35.</td>
<td>Application and Requirements for Issuance of Marriage Licenses for Residents and Nonresidents of this State</td>
</tr>
<tr>
<td>36.</td>
<td>Powers of Circuit Courts Under the Reciprocal Dependency Law</td>
</tr>
<tr>
<td><strong>DOMESTIC RELATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>37.</td>
<td>Vision and Hearing Tests for School Children</td>
</tr>
<tr>
<td>38.</td>
<td>Increasing Membership of the State Teachers' Retirement Board</td>
</tr>
<tr>
<td>39.</td>
<td>Responsibility of State Board of Education and State Superintendent of Schools as to Education of Handicapped Children</td>
</tr>
<tr>
<td>40.</td>
<td>Terms of Members of Board of Regents, Vacancies, Eligibility for Reappointment, Removal from Office</td>
</tr>
<tr>
<td>41.</td>
<td>State Supplemental Salaries for Public School Teachers</td>
</tr>
<tr>
<td>42.</td>
<td>Minimum Monthly Salary Schedule for School Service and Auxiliary Personnel</td>
</tr>
<tr>
<td><strong>EDUCATION</strong></td>
<td></td>
</tr>
<tr>
<td>43.</td>
<td>General Revision of the Election Law</td>
</tr>
<tr>
<td><strong>ELECTIONS</strong></td>
<td></td>
</tr>
<tr>
<td>44.</td>
<td>Office of Emergency Services and General Powers of the Governor with Respect Thereto</td>
</tr>
<tr>
<td><strong>EMERGENCY SERVICES</strong></td>
<td></td>
</tr>
<tr>
<td>45.</td>
<td>Regulation of Parking at the State Capitol by the Commissioner of Finance and Administration</td>
</tr>
<tr>
<td><strong>FINANCE AND ADMINISTRATION</strong></td>
<td></td>
</tr>
<tr>
<td>46.</td>
<td>Authority of Fire Marshal to Make Arrests in Arson Offenses</td>
</tr>
<tr>
<td><strong>FIRE MARSHAL</strong></td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>Substitution of Generic Name Drugs for Brand Name Drugs by Pharmacists</td>
</tr>
<tr>
<td><strong>GENERIC DRUGS</strong></td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>Authority of Director of Health to Designate a Representative to Serve in His stead on Certain Boards and Commissions on Which He Is an Ex officio Member</td>
</tr>
<tr>
<td>49.</td>
<td>Issuance of New Birth Certificate for Alien-born Children Upon Adoption in this State</td>
</tr>
<tr>
<td>50.</td>
<td>Establishing Testing Facilities to Detect Hypothyroidism in Newborn Infants</td>
</tr>
<tr>
<td>51.</td>
<td>Empowering the State Director of Health to Establish Mobile Testing Facilities</td>
</tr>
<tr>
<td>52.</td>
<td>Conduct of Proceedings of the West Virginia Resource Recovery-Solid Waste Disposal Authority</td>
</tr>
<tr>
<td><strong>HEALTH</strong></td>
<td></td>
</tr>
</tbody>
</table>
# Table of Contents

**Horse and Dog Racing**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>53.</td>
<td>License Tax on Horse and Dog Racetracks</td>
</tr>
</tbody>
</table>

**Insurance**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>54.</td>
<td>Inclusion of State Excise Tax in Value of Motor Vehicle for Insurance Purposes</td>
</tr>
<tr>
<td>55.</td>
<td>Effect of Nonrenewal of Policy as to Automobile Liability Insurance</td>
</tr>
<tr>
<td>56.</td>
<td>Priority of Claims Allowed by Receivership Courts Making Policyholders, Beneficiaries, Insureds and the West Virginia Guaranty Association Preferred Creditors</td>
</tr>
<tr>
<td>57.</td>
<td>Conversion from Group to Individual Coverage When Group Insurance Coverage Terminated</td>
</tr>
</tbody>
</table>

**Investments**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>58.</td>
<td>Management and Investment of State Funds</td>
</tr>
</tbody>
</table>

**Juries**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>59.</td>
<td>Eligibility Requirements for Reappointment as Jury Commissioners for Petit Juries</td>
</tr>
</tbody>
</table>

**Landlord and Tenant**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>60.</td>
<td>Landlord and Tenant Act</td>
</tr>
</tbody>
</table>

**Legislature**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>61.</td>
<td>Establishing a Legislative Commission on Pensions and Retirement</td>
</tr>
</tbody>
</table>

**Mentally Ill Persons**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>62.</td>
<td>Commitment Procedures for Mentally Ill Persons and Requirements as to Hearings on Incompetency</td>
</tr>
</tbody>
</table>

**Mines and Minerals**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.</td>
<td>Adopting Federal Surface Mining and Control Standards and Expanding Rule-Making Authority</td>
</tr>
</tbody>
</table>

**Money and Interest**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>64.</td>
<td>Maximum Interest Rate on Real Estate Loans</td>
</tr>
</tbody>
</table>

**Motor Vehicles**

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>65.</td>
<td>Licensing, Registration and Regulation of Mopeds</td>
</tr>
<tr>
<td>66.</td>
<td>Staggered Registration System for Trucks with Gross Weights of Not More than Eight Thousand Pounds</td>
</tr>
<tr>
<td>67.</td>
<td>Nonresident Violator Compact</td>
</tr>
<tr>
<td>68.</td>
<td>Surrender of Licenses from Other States Prior to Issuance of License in this State</td>
</tr>
<tr>
<td>69.</td>
<td>Applicant for Operator's or Chauffeur's License to State Prior Revocation or Suspension of License</td>
</tr>
<tr>
<td>70.</td>
<td>Extending Period for Use of Studded Tires from April 1 to April 15 of Each Year</td>
</tr>
<tr>
<td>71.</td>
<td>Amount of Damage Resulting from Accident Which Must Be Reported to Department of Motor Vehicles</td>
</tr>
</tbody>
</table>
# Table of Contents

## Municipalities

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>72. Municipal Waterworks and Electric Power Systems</td>
<td>437</td>
</tr>
<tr>
<td>73. Permitting Counties to Establish Neighborhood Rehabilitation Programs</td>
<td>451</td>
</tr>
<tr>
<td>74. Policemen's and Firemen's Pension and Relief Funds</td>
<td>455</td>
</tr>
</tbody>
</table>

## Natural Resources

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>75. Director of Natural Resources to Regulate and Set the Digging Season of Wild Ginseng</td>
<td>462</td>
</tr>
<tr>
<td>76. Sale of Pelts of Game or Fur-bearing Animals</td>
<td>469</td>
</tr>
<tr>
<td>77. Reporting of Deer and Wild Turkey Kills</td>
<td>470</td>
</tr>
<tr>
<td>78. Penalties for Hunting or Fishing After Revocation of License</td>
<td>471</td>
</tr>
<tr>
<td>79. Penalties for the Crime of Littering</td>
<td>472</td>
</tr>
<tr>
<td>80. Participation by the State in the National Pollutant Discharge Elimination System, Pursuant to the Federal Water Pollution Control Act</td>
<td>475</td>
</tr>
<tr>
<td>81. Limitation of Mining in the Cranberry Wilderness Study Area</td>
<td>502</td>
</tr>
<tr>
<td>82. Excluding Conservation Officers from the Wage and Hour Law and Providing Supplemental Pay</td>
<td>503</td>
</tr>
<tr>
<td>83. Qualifications of Conservation Officers</td>
<td>505</td>
</tr>
</tbody>
</table>

## Oil and Gas

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>84. General Revision of Oil and Gas Well Law</td>
<td>506</td>
</tr>
</tbody>
</table>

## Open Governmental Proceedings

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>85. Open Meetings and Proceedings of Governing Bodies</td>
<td>563</td>
</tr>
</tbody>
</table>

## Professions and Occupations

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>86. Automatic Revocation of Pharmacist's License Upon Conviction or Guilty Plea to a Felony</td>
<td>568</td>
</tr>
<tr>
<td>87. West Virginia Occupational Therapy Practice Act</td>
<td>570</td>
</tr>
</tbody>
</table>

## Public Safety

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>88. Pay and Allowances for Members of the National Guard</td>
<td>588</td>
</tr>
<tr>
<td>89. Salary Increase for Members of the Department of Public Safety</td>
<td>589</td>
</tr>
</tbody>
</table>

## Public Service Commission

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>90. Authority of the Public Service Commission to Enter and Inspect Railroad Property</td>
<td>592</td>
</tr>
</tbody>
</table>

## Public Works

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>91. Requiring Use of Domestic Aluminum, Glass and Steel in All State Building Projects</td>
<td>593</td>
</tr>
</tbody>
</table>

## Regulation of Trade

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>92. Service of Process or Notice on Domestic and Foreign Limited Partnerships</td>
<td>595</td>
</tr>
</tbody>
</table>
# Table of Contents

## Roads and Highways

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

## Surplus Property

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>94.</td>
<td>Disposition of Certain Surplus State Property by the Commissioner of Finance and Administration</td>
<td>611</td>
</tr>
</tbody>
</table>

## Taxation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.</td>
<td>West Virginia Tax Procedure and Administration Act</td>
<td>613</td>
</tr>
<tr>
<td>96.</td>
<td>B &amp; O Tax Rate on Electric Power and Tax Credit for Industrial Expansion</td>
<td>698</td>
</tr>
<tr>
<td>97.</td>
<td>B &amp; O Tax Exemptions for Coal Gasification and Liquefaction Projects</td>
<td>707</td>
</tr>
<tr>
<td>98.</td>
<td>Taxpayers of Specified Tax Liability to File Monthly B &amp; O Tax Returns and Remittances</td>
<td>709</td>
</tr>
<tr>
<td>99.</td>
<td>B &amp; O Tax Credit for Industrial Expansion</td>
<td>711</td>
</tr>
<tr>
<td>100.</td>
<td>Increasing Tax Rate on Gasoline and Special Fuels</td>
<td>714</td>
</tr>
<tr>
<td>101.</td>
<td>Gasoline and Special Fuel Tax Refunds to Retail Dealers for Loss Due to Evaporation</td>
<td>716</td>
</tr>
<tr>
<td>102.</td>
<td>Increasing Rate of Tax on Cigarettes</td>
<td>718</td>
</tr>
<tr>
<td>103.</td>
<td>Definition and Meaning of Personal Income Tax Terms</td>
<td>719</td>
</tr>
<tr>
<td>104.</td>
<td>Definition and Meaning of Corporation Net Income Tax Terms</td>
<td>720</td>
</tr>
<tr>
<td>105.</td>
<td>Refund of Money Paid at a Sheriff's Sale for Land Erroneously Assessed or Otherwise Nonexistent</td>
<td>723</td>
</tr>
</tbody>
</table>

## Unemployment Compensation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>106.</td>
<td>Unemployment Compensation Coverage</td>
<td>724</td>
</tr>
</tbody>
</table>

## Wheeling Creek Watershed

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>107.</td>
<td>Sale of Property Acquired by Wheeling Creek Watershed Protection and Flood Prevention Commission</td>
<td>769</td>
</tr>
</tbody>
</table>

## Workmen's Compensation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>108.</td>
<td>Amending Workmen's Compensation Law Generally</td>
<td>781</td>
</tr>
</tbody>
</table>

## Local and Special Laws

### Jefferson County

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>109.</td>
<td>Authorizing the County Commission of Jefferson County to Convey a Parcel of County-Owned Land to the Jefferson County Fair Association, Inc</td>
<td>801</td>
</tr>
</tbody>
</table>

### Morgan County

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>110.</td>
<td>Authorizing the Purchase and Financing of Certain Real Estate by the County Commission of Morgan County</td>
<td>802</td>
</tr>
</tbody>
</table>

### Shepherdstown

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>111.</td>
<td>Authorizing the Board of Regents to Sell Rumsey Hall of Shepherd College to Shepherdstown</td>
<td>805</td>
</tr>
</tbody>
</table>
## TABLE OF CONTENTS

### TAYLOR COUNTY

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>112. Reforming, Altering and Modifying the County Commission of Taylor County</td>
<td>806</td>
</tr>
</tbody>
</table>

### WYOMING COUNTY

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>113. Empowering the Wyoming County Commission to Convey Land to the Little Huff Creek Health Association, Inc.</td>
<td>808</td>
</tr>
</tbody>
</table>

### RESOLUTIONS

(Only resolutions of general interest, adopted during the session, are included herein)

### JOINT

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SJR 4. Proposing an amendment to the Constitution of the State, designated the &quot;School Levy and Bond Amendment&quot;</td>
<td>811</td>
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### CONCURRENT

<table>
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<th>Resolution</th>
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<tr>
<td>HCR 8. Urging the State and the U. S. Government to use only domestic-produced steel in construction projects</td>
<td>812</td>
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<td>HCR 19. Urging early completion of Corridor G in Southern West Virginia</td>
<td>813</td>
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<tr>
<td>HCR 23. Opposing the proposed Fisher-Mathias legislation now pending in Congress (Potomac River Shoreline Area)</td>
<td>814</td>
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<tr>
<td>HCR 53. Resolution memorializing the life and career of Oshel C. Parsons, veteran Parliamentarian and Assistant Clerk of the House of Delegates</td>
<td>820</td>
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<tr>
<td>HCR 54. Extending the second regular session of the Sixty-third Legislature</td>
<td>815</td>
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<tr>
<td>SCR 5. Requesting Congress to enact legislation and appropriate funds for construction of dams and flood control projects in Southern West Virginia</td>
<td>816</td>
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<tr>
<td>SCR 27. Interim study by the Joint Committee on Government and Finance on Surface Mining Control and Reclamation Act of 1977</td>
<td>817</td>
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<tr>
<td>SCR 28. Continuing certain studies by the Joint Committee on Government and Finance</td>
<td>818</td>
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</table>
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

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<td>3) C. Rudolph Seacrist (D)</td>
<td>Belle</td>
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</table>

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.
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<td>Charles Town</td>
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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** | **100** |
MEMBERS OF THE SENATE

REGULAR SESSION, 1971

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

<table>
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<th>District</th>
<th>Name</th>
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<tr>
<td>First</td>
<td>*Judith A. Herndon (R)</td>
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† 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, Gvoyich, Hendricks, Laulis, Schifano, Seacrist, Shiflet, Shumate, Slack, Sonis, Tighe, Whitlow, Wiedebusch, Worden, Wright, Greer and Otte.

[xv]
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.
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.
SENATE COMMITTEES

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
Steptoe (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.
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.

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

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

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;
(3) Causing tortious injury by an act or omission in this state;

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

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

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

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

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

(c) At the time of filing a complaint and before a summons is issued thereon, the plaintiff, or someone for him, shall execute a bond in the sum of one hundred dollars before the clerk of the court, with surety to be approved by said clerk, conditioned that on failure of the plaintiff to prevail in the action or proceeding that he will reimburse the defendant, or cause him to be reimbursed, the necessary taxable costs incurred by him in and about the defense of the action or proceeding in this state, and upon the issuance of a summons, the clerk shall certify thereon that such bond has been given and approved. Service shall be made by leaving the original and two copies of both the summons and the complaint with the certificate aforesaid of the clerk.
thereon, and a fee of two dollars with the secretary of state, or in his office, and such service shall be sufficient upon such nonresident: Provided, That notice of such service and a copy of the summons and complaint shall forthwith be sent by registered mail, return receipt requested, by the secretary of state to the defendant, and the defendant's return receipt signed by himself or his duly authorized agent or the registered mail so sent by the secretary of state which is refused by the addressee and which registered mail is returned to the secretary of state, or to his office, showing thereon the stamp of the post office department that delivery has been refused, shall be appended to the original summons and complaint, and filed therewith in the clerk's office of the court from which process issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.

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

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

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and shall include among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.
(2) "Nonresident" means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership, or corporation or a firm, partnership, or corporation which has moved from this state subsequent to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.

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

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

CHAPTER 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 comp-
ensation 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-
ly gross revenues of the agency or store, excluding sales tax
thereon. The amount of compensation shall be computed and
paid as follows:

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

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

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

25 (5) For gross revenues over ten thousand dollars per
month, four percent of all gross revenues over said ten thou-
"
The agent shall pay for utilities, renovations and operating expenses of the agency from the compensation set forth herein.

Each agent shall give bond in an amount fixed by the commissioner conditioned upon the faithful observance of the provisions of this chapter, compliance with the rules and regulations of the commissioner, and the accounting for and paying over of all moneys coming into his custody by virtue of his agency. An agent shall not, at any time, have on hand a stock of alcoholic liquors greater in value than the amount 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.]
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.
§47-18-4. 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.
§47-18-10. Final judgment in civil proceeding as prima facie evidence.
§47-18-17. Attorney general to bring actions on behalf of state residents; procedures used in such actions; damages.

§47-18-1. Short title.
1 This article shall be known and may be cited as the "West Virginia Antitrust Act."

1 As used in this article, unless the context otherwise requires:
2 (a) "Person" shall mean any natural person or persons, or
any corporation, partnership, company, trust or association of persons.

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

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

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


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

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

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

(A) for the purpose or with the effect of fixing, controlling, or maintaining the market price, rate or fee of any commodity or service; or

(B) fixing, controlling, maintaining, limiting or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale or supply of any service, for the purpose or with the effect of fixing, controlling or maintaining the market price, rate or fee of the commodity or service; or

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

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

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

(B) one or more persons submits a bid intending it to be higher than another bid and thus complementary thereto,
§47-18-4. Establishment, maintenance or use of monopoly.

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

§47-18-5. Exemptions.

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

(b) Nothing in this article shall be construed to forbid the existence and operation of any labor, agricultural or horticultural organization instituted for the purpose of mutual help, while lawfully carrying out its legitimate objects; or the existence or operation of any person whose activities or operations are regulated, to the extent of such regulation, pursuant to the laws of this state or of the United States, by a regulatory agency of this state or of the United States; or the bona fide religious and charitable activities of any nonprofit corporation, trust or organization established exclusively for religious or charitable purposes or both.

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

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

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

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

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

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

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

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

The attorney general may institute proceedings to prevent
and restrain violations of the provisions of this article. In
addition to granting such temporary, interlocutory, or per-
manent relief as is necessary to prevent and restrain a violation,
the courts of this state may grant injunctions reasonably
necessary to restore and preserve competition in the trade or commerce affected by a violation of this article.

If a permanent injunction is issued in such proceedings, reasonable costs of the action may be awarded the state, including but not limited to expenses of discovery and document reproduction.

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


Any person who shall be injured in his business or property by reason of a violation of the provisions of this article may bring an action therefor and shall recover treblefold the damages sustained by him, together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to the expenses of discovery and document reproduction.

The state and any of its political subdivisions and public agencies shall be deemed a person within the meaning of this section. The attorney general may bring an action on behalf of this state, or any of its public agencies, counties, municipalities or other political subdivisions to recover the damages provided for by this section or provision of federal law: Provided, That this shall not impair the authority of any such county, municipality or other political subdivision to bring such action on its own behalf.

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

A final judgment rendered in any civil proceeding brought by the state for violation of this article to the effect that a defendant has violated said article shall be prima facie evidence against such defendant in any proceeding brought by any other party against such defendant pursuant to section eight of this article, as to all matters with respect to which said judgment or
decree would be an estoppel as between the parties thereto:

Provided, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken.


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


Whenever any civil proceeding shall be commenced by the state to prevent, restrain or punish a violation of this article, the running of the statute of limitations in respect of every private right of action arising under this article and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: Provided, That whenever the running of the statute of limitations in respect of a cause of action arising under section eight shall be suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued, whichever is later.


The remedies provided in this article shall be cumulative.


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


Actions or proceedings under this article may be brought in
the circuit court of any county in which an act on which the action or proceeding is based occurred, or in any county in which the respondent or defendant resides or transacts business.


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

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

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

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

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

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

(e) An action under subsection (a) shall not be dismissed or compromised without approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.
(f) In any action brought under this section, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief which:

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

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

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

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

(2) the greater of:

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

(B) an amount equal to the expenses and costs of investigation, litigation and fund administration attributable to the case.

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


1 All civil penalties exacted pursuant to this article, unless

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


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


It shall be the duty of all public officers, their deputies, assistants, clerks, subordinates and employees, to render and furnish to the attorney general, his deputy or other designated representative, when so requested, all information and assistance in their possession and within their power for the enforcement of the provisions of this article.


In the administration of this article, the attorney general may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be a violation of this article from any person who has engaged or was about to engage in such method, act or practice. Such assurance may include a stipulation for voluntary payment by the alleged violator of damages sustained by any person or
public body. Any such assurance shall be in writing and be filed with the circuit court in which the alleged violator resides, has his principal place of business, or is doing business. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest.


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

CHAPTER 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

2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.

§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
Section 1. General policy.—The purpose of this act is to appropriate money necessary for economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred seventy-nine.

Sec. 2. Definitions.—For the purpose of this act: “Governor” shall mean the Governor of the State of West Virginia.

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

The “fiscal year” one thousand nine hundred seventy-nine shall mean the period from July first, one thousand nine hundred seventy-eight through June thirtieth, one thousand seven hundred seventy-nine.

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

Sec. 3. Classification of appropriations.—An appropriation for:

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

Unless otherwise specified, appropriations for personal services shall include salaries of heads of spending units;
"Current expenses" shall be expended only for operating cost other than personal services or capital outlay;

"Repairs and alterations" shall include all expenditures for materials, supplies and labor used in repairing and altering buildings, grounds and equipment, other than personal service;

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

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

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

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

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

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

AGRICULTURE

Department of agriculture—Acct. No. 510
Department of agriculture (agricultural awards)—Acct. No. 515
Department of agriculture (division of rural resources)—Acct. No. 513
Department of agriculture (meat inspection)—Acct. No. 514
Department of agriculture (soil conservation committee)—Acct. No. 512
Farm management commission—Acct. No. 511
BUREAU OF LABOR AND DEPARTMENT OF WEIGHTS AND MEASURES

Acct. No. 450

COUNCIL OF STATE GOVERNMENTS—Acct. No. 472

DEPARTMENT OF BANKING—Acct. No. 480

DEPARTMENT OF MINES—Acct. No. 460

INTERSTATE COMMISSION ON POTOMAC RIVER BASIN—Acct. No. 473

INTERSTATE EDUCATION COMPACT—Acct. No. 477

INTERSTATE MINING COMPACT COMMISSION—Acct. No. 471

OHIO RIVER BASIN COMMISSION—Acct. No. 469

OHIO RIVER VALLEY WATER SANITATION COMMISSION—Acct. No. 474

SOUTHERN REGIONAL EDUCATION BOARD—Acct. No. 475

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION—Acct. No. 476

WEST VIRGINIA NONINToxicATING BEER COMMISSION—Acct. No. 470

WEST VIRGINIA RACING COMMISSION—Acct. No. 495

WEST VIRGINIA STATE AERONAUTICS COMMISSION—Acct. No. 485

CORRECTION

Anthony Center—Acct. No. 369

Davis Center—Acct. No. 371

Department of corrections—Acct. No. 368

Department of corrections (community service northern region)—Acct. No. 366

Department of corrections (community service southern region)—Acct. No. 367

Department of corrections (probation and parole)—Acct. No. 365

Huttonsville Correctional Center—Acct. No. 376

Leckie Center—Acct. No. 373

West Virginia industrial home for girls—Acct. No. 372

West Virginia industrial school for boys—Acct. No. 370

West Virginia penitentiary—Acct. No. 375

West Virginia state prison for women—Acct. No. 374

CONSERVATION AND DEVELOPMENT

Department of natural resources—Acct. No. 565

Geological and economic survey—Acct. No. 520

Public land corporation—Acct. No. 566

Water development authority—Acct. No. 567

West Virginia railroad maintenance authority—Acct. No. 569

EDUCATIONAL

Department of culture and history—Acct. No. 351

Department of education—Acct. No. 286

Department of education (aid for exceptional children)—Acct. No. 295

Department of education (support personnel)—Acct. No. 299

Educational broadcasting authority—Acct. No. 291

Marshall University (medical school)—Acct. No. 284

State board of education (early childhood aides)—Acct. No. 297

State board of education (vocational division)—Acct. No. 294

State board of education (vocational division)—Acct. No. 289
### APPROPRIATIONS

**State department of education (professional educators)—Acct. No. 290** 40

**State department of education (state aid to schools)—Acct. No. 295** 41

**State department of education (school lunch program)—Acct. No. 287** 40

**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

**West Virginia schools for the deaf and the blind—Acct. No. 333** 43

**West Virginia University (medical school)—Acct. No. 285** 39

### EXECUTIVE

**Governor’s office—Acct. No. 120** 29

**Governor’s office (civil contingent fund)—Acct. No. 124** 30

**Governor’s office (custodial fund)—Acct. No. 123** 30

**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

**Office of economic and community development—Acct. No. 121** 29

**Office of emergency services—Acct. No. 130** 31

### FISCAL

**Auditor’s office (general administration)—Acct. No. 150** 31

**Auditor’s office (social security)—Acct. No. 151** 32

**Department of finance and administration—Acct. No. 210** 34

**Municipal bond commission—Acct. No. 170** 33

**State board of insurance—Acct. No. 225** 35

**State tax department—Acct. No. 180** 33

**State tax department (property appraisal)—Acct. No. 185** 33

**Treasurer’s office—Acct. No. 160** 32

**Treasurer’s office (school building sinking fund)—Acct. No. 165** 32

### HEALTH AND WELFARE

**Andrew S. Rowan memorial home—Acct. No. 427** 54

**Colin Anderson Center—Acct. No. 419** 53

**Denmar state hospital—Acct. No. 432** 55

**Department of veterans affairs—Acct. No. 404** 51

**Department of veterans affairs (patriotic exercises)—Acct. No. 403** 51

**Department of welfare—Acct. No. 405** 51

**Department of welfare—West Virginia Children’s Home—Acct. No. 412** 52

**Fairmont emergency hospital—Acct. No. 425** 53

**Greenbrier school for mentally retarded children—Acct. No. 414** 52

**Hopemont state hospital—Acct. No. 430** 54

**Pinecrest state hospital—Acct. No. 431** 54

**Solid waste disposal—Acct. No. 402** 50

**State board of education (rehabilitation division)—Acct. No. 440** 55

**State commission on aging—Acct. No. 406** 51
## Appropriations

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>State health department</strong></td>
<td>Acct. No. 400</td>
<td>48</td>
</tr>
<tr>
<td>State health department—mental hospitals</td>
<td>Acct. No. 416</td>
<td>52</td>
</tr>
<tr>
<td>Welch emergency hospital</td>
<td>Acct. No. 426</td>
<td>54</td>
</tr>
</tbody>
</table>

### INCORPORATING AND RECORDING

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary of state</td>
<td>Acct. No. 250</td>
<td>37</td>
</tr>
</tbody>
</table>

### JUDICIAL

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court—General Judicial</td>
<td>Acct. No. 111</td>
<td>28</td>
</tr>
</tbody>
</table>

### LEGAL

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney general</td>
<td>Acct. No. 240</td>
<td>36</td>
</tr>
<tr>
<td>Commission on uniform state laws</td>
<td>Acct. No. 245</td>
<td>36</td>
</tr>
</tbody>
</table>

### LEGISLATIVE

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>House of Delegates</td>
<td>Acct. No. 102</td>
<td>26</td>
</tr>
<tr>
<td>Joint expenses</td>
<td>Acct. No. 103</td>
<td>27</td>
</tr>
<tr>
<td>Senate</td>
<td>Acct. No. 101</td>
<td>24</td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of architects</td>
<td>Acct. No. 595</td>
<td>66</td>
</tr>
<tr>
<td>Board of chiropractic examiners</td>
<td>Acct. No. 588</td>
<td>65</td>
</tr>
<tr>
<td>Board of embalmers and funeral directors</td>
<td>Acct. No. 593</td>
<td>66</td>
</tr>
<tr>
<td>Board of examiners for practical nurses</td>
<td>Acct. No. 587</td>
<td>65</td>
</tr>
<tr>
<td>Board of land surveyors</td>
<td>Acct. No. 585</td>
<td>65</td>
</tr>
<tr>
<td>Board of osteopathy</td>
<td>Acct. No. 591</td>
<td>66</td>
</tr>
<tr>
<td>Board of pharmacy</td>
<td>Acct. No. 590</td>
<td>66</td>
</tr>
<tr>
<td>Board of professional foresters</td>
<td>Acct. No. 586</td>
<td>65</td>
</tr>
<tr>
<td>Board of registration for professional engineers</td>
<td>Acct. No. 594</td>
<td>66</td>
</tr>
<tr>
<td>Board of sanitarians</td>
<td>Acct. No. 599</td>
<td>67</td>
</tr>
<tr>
<td>Human rights commission</td>
<td>Acct. No. 598</td>
<td>67</td>
</tr>
<tr>
<td>Insurance commissioner</td>
<td>Acct. No. 616</td>
<td>68</td>
</tr>
<tr>
<td>State fire commission</td>
<td>Acct. No. 617</td>
<td>68</td>
</tr>
<tr>
<td>State veterinary board</td>
<td>Acct. No. 596</td>
<td>66</td>
</tr>
<tr>
<td>West Virginia civil service system</td>
<td>Acct. No. 584</td>
<td>64</td>
</tr>
<tr>
<td>West Virginia public employees insurance board</td>
<td>Acct. No. 615</td>
<td>68</td>
</tr>
<tr>
<td>West Virginia public employees retirement board</td>
<td>Acct. No. 614</td>
<td>67</td>
</tr>
</tbody>
</table>

### PROTECTION

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjutant general (state militia)</td>
<td>Acct. No. 580</td>
<td>64</td>
</tr>
<tr>
<td>Department of public safety</td>
<td>Acct. No. 570</td>
<td>64</td>
</tr>
</tbody>
</table>

### ROADS AND HIGHWAYS

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>State department of highways</td>
<td>Acct. No. 641</td>
<td>69</td>
</tr>
</tbody>
</table>

§2. Appropriations from other funds.

## PAYABLE FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Category</th>
<th>Account No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor's office (land department operating fund)</td>
<td>Acct. No. 812</td>
<td>72</td>
</tr>
<tr>
<td>Department of agriculture</td>
<td>Acct. No. 818</td>
<td>74</td>
</tr>
<tr>
<td>Department of finance and administration (division of purchasing—revolving fund)</td>
<td>Acct. No. 814</td>
<td>73</td>
</tr>
<tr>
<td>Department of finance and administration (information system services division fund)</td>
<td>Acct. No. 8151</td>
<td>73</td>
</tr>
<tr>
<td>Department of natural resources</td>
<td>Acct. No. 830</td>
<td>76</td>
</tr>
<tr>
<td>Department of public safety (inspection fees)</td>
<td>Acct. No. 835</td>
<td>77</td>
</tr>
<tr>
<td>Public service commission</td>
<td>Acct. No. 828</td>
<td>74</td>
</tr>
</tbody>
</table>
Ch. 4] APPROPRIATIONS

Public service commission (gas pipeline division)—Acct. No. 8285 75
Public service commission (motor carrier division)—Acct. No. 829 76
Real estate commission—Acct. No. 801 72
State committee of barbers and beauticians—Acct. No. 822 74
Treasurer’s office—Acct. No. 800 71
West Virginia alcohol beverage control—Acct. No. 927 81
West Virginia Board of Regents (capital improvement fund)—
   Acct. No. 8845 79
West Virginia Board of Regents (certain capital improvements)—
   Acct. No. 8860 80
West Virginia Board of Regents (special capital improvement fund)—
   Acct. No. 8835 79
West Virginia board of regents (special capital improvements fund)—Acct. No. 8840 79
West Virginia board of regents (state system special capital improvement fund)—Acct. No. 8835 78
West Virginia board of regents—West Virginia University
   (Special capital improvement fund)—Acct. No. 8830 77
West Virginia racing commission—Acct. No. 808 72

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 671 70
State department of highways—Acct. No. 670 69
State tax department (gasoline tax division)—Acct. No. 672 71

PAYABLE FROM GENERAL SCHOOL FUND

Department of education (veterans education)—Acct. No. 702 71

PAYABLE FROM MEDICAL SCHOOL FUND

West Virginia University (medical school)—Acct. No. 928 82

PAYABLE FROM WORKMEN’S COMPENSATION FUND

Workmen’s compensation commission—Acct. No. 900 81

§3. Awards for claims against the state.

§4. Reappropriations.

§5. Appropriations from revenue sharing trust fund.
   Department of agriculture—Acct. No. 9771 90
   Department of natural resources—Acct. No. 9725 89
   Governor’s office—Acct. No. 9721 88
   State board of education—vocational education—Acct. No. 9800 89
   State department of highways—Acct. No. 9705 88
   State health department—Acct. No. 9715 88

§6. Appropriation from countercyclical fiscal assistance trust fund.
   Governor’s office—Acct. No. 8012 90

§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.
§15. Appropriations for local governments.
§16. Total appropriations.
§17. General school fund.

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

<table>
<thead>
<tr>
<th>LEGISLATIVE</th>
<th>Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1—Senate</td>
<td>1978-1979</td>
</tr>
<tr>
<td>Acct. No. 101</td>
<td></td>
</tr>
<tr>
<td>1 Compensation of Members                     $ 235,000</td>
<td></td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and employees</td>
<td>650,000</td>
</tr>
<tr>
<td>4 Expenses of Members                          130,000</td>
<td></td>
</tr>
<tr>
<td>5 Current Expenses and Contingent Fund          255,000</td>
<td></td>
</tr>
<tr>
<td>6 Printing Blue Book                            117,000</td>
<td></td>
</tr>
<tr>
<td>7 Total                                          $ 1,387,000</td>
<td></td>
</tr>
</tbody>
</table>

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

15 The appropriations for the Senate for the fiscal year 1977-78 are to remain in full force and
effect, and are hereby reappropriated to June 30, 1979.

Any balances so reappropriated may be transferred and credited to the 1978-79 accounts.

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

The Clerk of the Senate with approval of the President is authorized to draw his requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisition for same to be accompanied by the bills to be filed with the Auditor.

The Clerk of the Senate with approval of the President shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate with approval of the President shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his requisitions for the
payments of all such staff personnel upon the State Auditor, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate for such services.

For duties imposed by law and the Senate, the Clerk of the Senate shall be paid a monthly salary as provided in Senate resolution adopted January 1978, and payable out of the amount appropriated for Compensation 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 employees \________________________________________\ 400,000
3 Expenses of Members \___________________________\ 200,000
4 Current Expenses and Contingent Fund \__________\ 200,000

6 Total \_______________________________________\$ 1,350,000

The appropriations for the House of Delegates for the fiscal year 1977-78 are to remain in full force and effect, and are hereby reappropriated to June 30, 1979.

Any balances so reappropriated may be transferred and credited to the 1978-79 accounts.

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

The Clerk of the House of Delegates, with approval of the Speaker, is authorized to draw his requisitions upon the Auditor, payable out 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 appropri-
25 tion 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 Conting-
39 ent 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 fiscal year 1977-78 are to remain in full force and effect and are hereby reappropriated to June 30, 1979. Any balances so reappropriated may be transferred and credited to the 1978-79 accounts.

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 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 Administrative Director of the State Supreme Court of Appeals who shall draw his requisitions for warrants in payment in the form of payrolls, making deductions therefrom, as required by law, for taxes and other items.

14 The appropriation for Judges' Retirement System is to be transferred to the Judges' Retirement Fund, in accordance with the law 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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,478.454</td>
</tr>
<tr>
<td>2 Other Expenses</td>
<td>$1,562.600</td>
</tr>
<tr>
<td>3 Judges' Retirement System</td>
<td>$750,000</td>
</tr>
<tr>
<td>4 Other Court Costs</td>
<td>$1,770,000</td>
</tr>
<tr>
<td>5 Judicial Training Program</td>
<td>$100,000</td>
</tr>
<tr>
<td>6 Law Libraries Program</td>
<td>$250,000</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$14,911,054</strong></td>
</tr>
</tbody>
</table>

II. Unconstitutional Budget Adopted by Legislature

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$9,177.634</td>
</tr>
<tr>
<td>2 Other Expenses</td>
<td>$962,400</td>
</tr>
<tr>
<td>3 Judges' Retirement System</td>
<td>$750,000</td>
</tr>
<tr>
<td>4 Other Court Costs</td>
<td>$1,684,000</td>
</tr>
<tr>
<td>5 Judicial Training Program</td>
<td>$50,000</td>
</tr>
<tr>
<td>6 Law Libraries Program</td>
<td>$117,000</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$12,741,034</strong></td>
</tr>
</tbody>
</table>

III. Constitutional Budget Required to be Published

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,103.054</td>
</tr>
<tr>
<td>2 Other Expenses</td>
<td>$1,562.600</td>
</tr>
<tr>
<td>3 Judges' Retirement System</td>
<td>$750,000</td>
</tr>
<tr>
<td>4 Other Court Costs</td>
<td>$1,770,000</td>
</tr>
<tr>
<td>5 Judicial Training Program</td>
<td>$100,000</td>
</tr>
<tr>
<td>6 Law Libraries Program</td>
<td>$250,000</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$14,535,654</strong></td>
</tr>
</tbody>
</table>
Ch. 4] APPROPRIATIONS

ministrative Director of the State Supreme Court of Appeals.

Any unexpended balance remaining in this appropriation at the close of fiscal year 1977-78 is hereby reappropriated for expenditure 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 Partnership Grants 5,000,000
10 Economic Development Loan Fund 6,000,000

12 Total $17,572,257

Any unexpended balance remaining in accounts “Federal-State Coordination,” “Governor’s Committee on Crime, Delinquency and Correc-

“Office of Criminal Justice and Highway Safety,” “Regional Council—To Match Federal Funds,” and “National Youth Science Camp” at the close of the fiscal year 1977-78.
is hereby reappropriated for expenditure
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—McMehen 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
the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

11—Office of Emergency Services

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$175,639</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$42,080</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$11,290</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$229,009</td>
</tr>
</tbody>
</table>

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

12—Governor’s Office—Emergency Flood Disaster Relief

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$3,146,340</td>
</tr>
</tbody>
</table>

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.

FISCAL

13—Auditor’s Office—General Administration

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of State Auditor</td>
<td>$32,500</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$957,015</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$397,125</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$39,700</td>
</tr>
<tr>
<td>5</td>
<td>Mental Hygiene Fund</td>
<td>$200,000</td>
</tr>
<tr>
<td>6</td>
<td>Microfilm</td>
<td>$20,000</td>
</tr>
<tr>
<td>7</td>
<td>Representation of Needy Persons Fund</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$3,146,340</td>
</tr>
</tbody>
</table>
14—Auditor's Office—Social Security

Acct. No. 151

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

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

14 Any unexpended balance remaining in the appropriation for "Auditor's Office—Social Security" at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure 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 appropriation for "Treasurer's Office—School Building Sinking Fund" at the close of the
fiscal year 1977-78 is hereby reappropriated
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

The above appropriation “Circuit Breaker Reimbursement” is to be used in accordance with Engrossed House Bill No. 751, 1972 Regular 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 Computerization ____________ 80,000
4 Equipment ____________ 10,210

5 Total ____________________________________ $ 2,852,775

Any unexpended balance remaining in the “Property Appraisal Account” at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.
20—Department of Finance and Administration

Acct. No. 210

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,532,654</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>720,596</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>215,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>18,000</td>
</tr>
<tr>
<td>5 Postage</td>
<td>700,000</td>
</tr>
<tr>
<td>6 Records Management</td>
<td>63,000</td>
</tr>
<tr>
<td>7 State Agency Surplus Property</td>
<td>90,622</td>
</tr>
<tr>
<td>8 Utilities</td>
<td>550,000</td>
</tr>
<tr>
<td>9 Fire Service Fee</td>
<td>73,965</td>
</tr>
<tr>
<td>10 Building Equipment and Supplies</td>
<td>25,000</td>
</tr>
<tr>
<td>11 Major Building Repairs</td>
<td>940,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5,928,837</strong></td>
</tr>
</tbody>
</table>

The Workmen’s Compensation Commission, Department of Welfare, Public Service Commission, Department of Natural Resources, Department of Motor Vehicles, State Department of Highways, State Health Department and State Tax Department—Income Tax Division shall reimburse the Postage appropriation of the Department of Finance and Administration monthly for all meter service. Any spending unit operating from Special Revenue or receiving reimbursement for postage costs from the Federal Government shall refund to the Postage account of the Department of Finance and Administration such amounts. Should this appropriation for Postage be insufficient to meet the mailing requirements of the State spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for the Department for postage in excess of this appropriation.
Any unexpended balance remaining at the “Postage Account” at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

Any unexpended balance remaining at the close of the fiscal year 1977-78 for “Major Building Repairs” is hereby reappropriated for expenditure during the fiscal year 1978-79 (Major Building Repairs to include maintenance and repairs to Governor’s Mansion).

State Department of Highways shall reimburse the appropriation of the Department of Finance and Administration monthly for all actual expenses incurred pursuant to the provisions of Chapter 17, Article 2-A, Section 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 |
| **Total** | **$2,171,500** |

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

25 Any or all of the funds appropriated for "Insurance Fund" may be transferred to a special account for disbursement for payment of premiums and insurance losses.

**LEGAL**

**22—Attorney General**

Acct. No. 240

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Attorney General</td>
<td>$35,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,053,911</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$165,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$29,000</td>
</tr>
<tr>
<td>To protect the resources or tax</td>
<td>$3,250</td>
</tr>
<tr>
<td>structure of the State in</td>
<td></td>
</tr>
<tr>
<td>controversies or legal proceedings</td>
<td></td>
</tr>
<tr>
<td>affecting same</td>
<td></td>
</tr>
<tr>
<td>Consumer Protection</td>
<td>$193,556</td>
</tr>
</tbody>
</table>

**Total** $1,481,717

10 When legal counsel or secretarial help is appointed by the Attorney General, for any State spending unit, this account shall be reimbursed from such unit's appropriate account in an amount agreed upon by the Attorney General and the proper authority of said spending unit.

17 The above appropriation for "Consumer Protection" is to be used in accordance with Enrolled Senate Bill No. 240, 1974 Regular Session of the Legislature.

**23—Commission on Uniform State Laws**

Acct. No. 245

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$8,000</td>
</tr>
</tbody>
</table>
2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

24—Secretary of State

Acct. No. 250

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Secretary of State</td>
<td>$30,000</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$235,478</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$87,032</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$18,000</td>
</tr>
<tr>
<td>5 Regulation of Charitable Fund Raising</td>
<td>$47,800</td>
</tr>
<tr>
<td>6 Certification of Primary and General Elections</td>
<td>$4,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$422,510</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in “Publication of State Register” at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

EDUCATIONAL

25—State Department of Education

Acct. No. 277

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Teacher Education Program—Total</td>
<td>$131,250</td>
</tr>
</tbody>
</table>

26—West Virginia Board of Regents (Control)

Acct. No. 279

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$89,458,468</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$15,644,806</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$1,793,134</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$3,808,698</td>
</tr>
<tr>
<td>5 Veterinary, Optometry, Podiatry and Architectural Tuition</td>
<td>$646,100</td>
</tr>
<tr>
<td>7 Bureau of Coal Research</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>8 National Research Center for coal and energy</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>9 New Programs</td>
<td>$322,936</td>
</tr>
<tr>
<td>10 Unclassified</td>
<td>$100,000</td>
</tr>
<tr>
<td>11 Title I—Matching Funds</td>
<td>$133,000</td>
</tr>
<tr>
<td>12 Educational T. V.</td>
<td>$928,146</td>
</tr>
</tbody>
</table>
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 Kearneysville Experimental Farm 150,000
17 Washington Carver Camp 100,000
18 Community and Development Research (Glenville) 34,785
19 Center for Economic Action (Concord) 61,751

22 Total $108,817,972
23 Any unexpended balance remaining in the appropriation “Moving of WWVU-TV” at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

27—West Virginia Board of Regents

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

1 Unclassified—Total $3,069,840
2 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.

29—Marshall University—Medical School

1 Unclassified—Total $1,834,308
2 Any unexpended balance remaining in this appropriation at the close of the fiscal year
4 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

30—West Virginia University—Medical School

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Program Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>285</td>
<td>Personal Services</td>
<td>$9,024,019</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>$4,828,000</td>
</tr>
<tr>
<td></td>
<td>Repairs and Alterations</td>
<td>$400,000</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>$250,000</td>
</tr>
<tr>
<td></td>
<td>Family Practice Residency Support Program</td>
<td>$400,000</td>
</tr>
<tr>
<td></td>
<td>Intern and Residency Support Programs for Community Hospitals</td>
<td>$825,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$15,727,019</td>
</tr>
</tbody>
</table>

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

31—Department of Education

<table>
<thead>
<tr>
<th>Acct. No.</th>
<th>Program Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>286</td>
<td>Personal Services</td>
<td>$898,630</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>$641,825</td>
</tr>
<tr>
<td></td>
<td>Equipment</td>
<td>$11,000</td>
</tr>
<tr>
<td></td>
<td>National Defense Education Act</td>
<td>$513,412</td>
</tr>
<tr>
<td></td>
<td>Statewide Testing Program</td>
<td>$131,665</td>
</tr>
<tr>
<td></td>
<td>Safety Education—Aid to Counties</td>
<td>$210,000</td>
</tr>
<tr>
<td></td>
<td>State Aid to Children's Home</td>
<td>$80,000</td>
</tr>
<tr>
<td></td>
<td>Regional Education Service Agency</td>
<td>$400,000</td>
</tr>
<tr>
<td></td>
<td>Project 0629-061, Identification &amp; Remediation of Learning Disabilities</td>
<td>$50,000</td>
</tr>
<tr>
<td></td>
<td>Project 0629-062, Diagnosis and Remediation of Learning Disabilities</td>
<td>$90,000</td>
</tr>
<tr>
<td></td>
<td>Project 0629-067, Early Learning and Child Care</td>
<td>$62,700</td>
</tr>
<tr>
<td></td>
<td>Project 0620-077, Early Learning and Child Care</td>
<td>$90,000</td>
</tr>
<tr>
<td></td>
<td>Project 0629-078, Early Learning and Child Care</td>
<td>$90,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$3,269,232</td>
</tr>
</tbody>
</table>
The above appropriation includes the State Board of Education and their executive offices.

Any part or all of the appropriation for “National Defense Education Act” may be transferred to a Special Revenue Fund for the purpose of matching Federal Funds for this program.

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

#### Acct. No. 287

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$135,563</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$36,700</td>
</tr>
<tr>
<td>3 Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>$1,918,755</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,091,018</strong></td>
</tr>
</tbody>
</table>

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

#### Acct. No. 289

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$238,474</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$69,919</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>4 Vocational Aid</td>
<td>$8,362,753</td>
</tr>
<tr>
<td>5 Adult Basic Education</td>
<td>$700,000</td>
</tr>
<tr>
<td>6 Replacement of Equipment</td>
<td>$750,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$10,128,146</strong></td>
</tr>
</tbody>
</table>

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

### 34—State Department of Education—Professional Educators

#### Acct. No. 290

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td><strong>$42,393,386</strong></td>
</tr>
</tbody>
</table>
### 35—Educational Broadcasting Authority

**Acct. No. 291**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$62,499</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$34,233</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$2,500</td>
</tr>
<tr>
<td>4</td>
<td>Regional ETV</td>
<td>$1,572,094</td>
</tr>
<tr>
<td>5</td>
<td>Educational T.V.</td>
<td>$0</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td><strong>$1,671,326</strong></td>
</tr>
</tbody>
</table>

*“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**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$27,072</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$522,928</td>
</tr>
<tr>
<td>3</td>
<td><strong>Total</strong></td>
<td><strong>$550,000</strong></td>
</tr>
</tbody>
</table>

*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**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Professional Educators</td>
<td>$215,066,072</td>
</tr>
<tr>
<td>2</td>
<td>Other Personnel</td>
<td>$43,013,214</td>
</tr>
<tr>
<td>3</td>
<td>Fixed Charges</td>
<td>$20,775,383</td>
</tr>
<tr>
<td>4</td>
<td>Transportation Charges</td>
<td>$11,013,013</td>
</tr>
<tr>
<td>5</td>
<td>Administration</td>
<td>$2,150,665</td>
</tr>
</tbody>
</table>
## Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Other Current Expenses</td>
<td>$25,807,929</td>
</tr>
<tr>
<td>7 National Average Attainment</td>
<td>$17,967,721</td>
</tr>
<tr>
<td>8 Program Improvement</td>
<td>$1,731,963</td>
</tr>
<tr>
<td>9 Increased Enrollment</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>10 Subtotal</td>
<td>$339,025,960</td>
</tr>
<tr>
<td>11 Less Local Share</td>
<td>$52,749,118</td>
</tr>
<tr>
<td><strong>12 Total</strong></td>
<td><strong>$286,276,842</strong></td>
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</table>

### Department of Education—Aid for Exceptional Children

**Acct. No. 296**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$204,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$94,400</td>
</tr>
<tr>
<td>3 Out-of-State Instruction</td>
<td>$382,000</td>
</tr>
<tr>
<td>4 Aid to Counties</td>
<td>$6,600,000</td>
</tr>
<tr>
<td><strong>5 Total</strong></td>
<td><strong>$7,280,400</strong></td>
</tr>
</tbody>
</table>

The appropriation for “Out-of-State Instruction” may be expended to provide instruction, care and maintenance for educable persons who have multiple handicaps and for whom the state provides no facilities.

### State Board of Education—Early Childhood Aides

**Acct. No. 297**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Early Childhood Aides—Total</td>
<td>$3,099,096</td>
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### Teachers' Retirement Board

**Acct. No. 298**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Teachers Retirement Fund</td>
<td>$29,000,000</td>
</tr>
<tr>
<td>2 Expense Fund</td>
<td>$35,000</td>
</tr>
<tr>
<td><strong>3 Total</strong></td>
<td><strong>$29,035,000</strong></td>
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### Department of Education

**Acct. No. 299**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 To fund minimum salaries for Support Personnel—Total</td>
<td>$26,174,289</td>
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</tbody>
</table>
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 appropriation for "Library Matching Fund" at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

45—Department of Culture and History

Acct. No. 351

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

30 The above appropriations, Mt. State Forest Festival, Theatre Arts of West Virginia, West Virginia Water Festival, Tri-County Fair, Oil and Gas Festival, White Water Weekend, Calhoun County Wood Festival, New Martinsville Regatta, Braxton County Regatta, Cherry River Festival, Mothers' Day Founders Festival, Mt. Heritage Arts and Crafts Fair, Wellsburg July 4th Celebration, Sternwheel Regatta, Sistersville Outboard Regatta, Ohio River Festival, Ripley 4th of July Festival and King Coal Festival, shall be expended only upon authorization of the Director of the Department of Culture and History and in
41 accordance with the provisions of Chapter 5A and Chapter 12, Article 3 of the Code of West Virginia.

43 All Federal moneys received as reimbursement to the Science and Culture Center, for moneys expended from the General Revenue Fund for Arts and Humanities are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses and Equipment.

49 Any unexpended balance remaining in the appropriation for "Independence Hall, Wheeling, West Virginia" at the close of the fiscal year 1977-78 is hereby reappropriated for 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 and Parole $48,000
2 Other Personal Services $23,968
3 Current Expenses $13,300

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

Total $296,673

48—Department of Corrections—Community Service Southern Region

Acct. No. 367

1 Personal Services $462,527
<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>160,000</td>
<td></td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>1,500</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>4 Equipment</td>
<td>3,500</td>
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<tr>
<td>5 Total</td>
<td>$627,527</td>
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_49—Department of Corrections_

<table>
<thead>
<tr>
<th>Acct. No. 368</th>
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</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$30,000</td>
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<tr>
<td>2 Other Personal Services</td>
<td>373,664</td>
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</tr>
<tr>
<td>3 Current Expenses</td>
<td>136,500</td>
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<tr>
<td>4 Repairs and Alterations</td>
<td>5,200</td>
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<tr>
<td>5 Equipment</td>
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<tr>
<td>6 Total</td>
<td>$548,364</td>
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</table>

_50—Anthony Center_

<table>
<thead>
<tr>
<th>Acct. No. 369</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$429,744</td>
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<td>2 Current Expenses</td>
<td>167,100</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>16,700</td>
<td></td>
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<tr>
<td>4 Equipment</td>
<td>9,600</td>
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<tr>
<td>5 Total</td>
<td>$623,144</td>
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</tbody>
</table>

_51—West Virginia Industrial School for Boys_

<table>
<thead>
<tr>
<th>Acct. No. 370</th>
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<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$960,201</td>
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</tr>
<tr>
<td>2 Current Expenses</td>
<td>290,073</td>
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</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>74,000</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>4 Equipment</td>
<td>40,000</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td>$1,364,274</td>
<td></td>
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<td></td>
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</tbody>
</table>

_52—Davis Center_

<table>
<thead>
<tr>
<th>Acct. No. 371</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$363,782</td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>2 Current Expenses</td>
<td>148,000</td>
<td></td>
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</tbody>
</table>
### 53—West Virginia Industrial Home for Girls

**Acct. No. 372**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$450,000</td>
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<tr>
<td>2 Current Expenses</td>
<td>$140,000</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$9,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$11,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$610,500</strong></td>
</tr>
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</table>

### 54—Leckie Center

**Acct. No. 373**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$377,891</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$160,000</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$19,000</td>
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<tr>
<td>4 Equipment</td>
<td>$22,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$578,891</strong></td>
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</tbody>
</table>

### 55—West Virginia State Prison for Women

**Acct. No. 374**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$367,906</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$136,900</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$74,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$28,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$606,806</strong></td>
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### 56—West Virginia Penitentiary

**Acct. No. 375**

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,510,162</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,301,875</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$77,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$95,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$3,894,044</strong></td>
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</tbody>
</table>
### Appropriations

5 Capital Improvements 75,000

6 Total 4,059,037

---

57—Huttonsville Correctional Center

Acct. No. 376

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,519,449</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>980,000</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>79,000</td>
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<td>4 Equipment</td>
<td>37,250</td>
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<td><strong>Total</strong></td>
<td><strong>$2,615,699</strong></td>
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### Health and Welfare

58—State Health Department

Acct. No. 400

Administration

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$850,252</td>
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<td>2 Current Expenses</td>
<td>503,441</td>
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<td>3 Equipment</td>
<td>20,649</td>
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<td><strong>Subtotal</strong></td>
<td><strong>$1,374,342</strong></td>
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Preventive Health

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>5 Personal Services</td>
<td>924,880</td>
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<tr>
<td>6 Current Expenses</td>
<td>840,409</td>
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<tr>
<td>7 Equipment</td>
<td>120,117</td>
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<tr>
<td><strong>Subtotal</strong></td>
<td><strong>$1,885,406</strong></td>
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Alcoholism and Drug Abuse

<table>
<thead>
<tr>
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<th>Amount</th>
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<tbody>
<tr>
<td>9 Personal Services</td>
<td>528,789</td>
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<td>10 Current Expenses</td>
<td>52,352</td>
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<td>11 Repairs and Alterations</td>
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<td><strong>Subtotal</strong></td>
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Maternal and Child Health

<table>
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<tr>
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<tr>
<td>13 Personal Services</td>
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<td>14 Current Expenses</td>
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<td>Items</td>
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</tr>
<tr>
<td><strong>Environmental Health</strong></td>
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<tr>
<td>17 Personal Services</td>
<td></td>
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<tr>
<td>18 Current Expenses</td>
<td></td>
</tr>
<tr>
<td>19 Equipment</td>
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</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Community Service</strong></td>
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<tr>
<td>21 Personal Services</td>
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<tr>
<td>22 Current Expenses</td>
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</tr>
<tr>
<td>23 Repairs and Alterations</td>
<td></td>
</tr>
<tr>
<td>24 Equipment</td>
<td></td>
</tr>
<tr>
<td>25 State Aid to Local and Regional Agencies</td>
<td></td>
</tr>
<tr>
<td>26 Contracts for Community Mental Health-Mental</td>
<td></td>
</tr>
<tr>
<td>27 Retardation Services</td>
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</tr>
<tr>
<td><strong>Subtotal</strong></td>
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</tr>
<tr>
<td><strong>Research and Statistics</strong></td>
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<tr>
<td>29 Personal Services</td>
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<tr>
<td>30 Current Expenses</td>
<td></td>
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<tr>
<td>31 Equipment</td>
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<td><strong>Subtotal</strong></td>
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<tr>
<td><strong>Institutional Service</strong></td>
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<tr>
<td>33 Personal Services</td>
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<tr>
<td>34 Current Expenses</td>
<td></td>
</tr>
<tr>
<td>35 Equipment</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td></td>
</tr>
<tr>
<td><strong>State Hygienic Laboratory</strong></td>
<td></td>
</tr>
<tr>
<td>37 Personal Services</td>
<td></td>
</tr>
<tr>
<td>38 Current Expenses</td>
<td></td>
</tr>
<tr>
<td>39 Equipment</td>
<td></td>
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<tr>
<td><strong>Subtotal</strong></td>
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### Appropriations

#### Certification, Licensure and Inspection

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
<td>41</td>
<td>Personal Services</td>
<td>138,707</td>
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<tr>
<td>42</td>
<td>Current Expenses</td>
<td>34,868</td>
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<tr>
<td>43</td>
<td>Equipment</td>
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<td>44</td>
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#### Office of Chief Medical Examiner

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<th>Item</th>
<th>Description</th>
<th>Cost</th>
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</thead>
<tbody>
<tr>
<td>45</td>
<td>Personal Services</td>
<td>305,746</td>
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<tr>
<td>46</td>
<td>Current Expenses</td>
<td>630,424</td>
</tr>
<tr>
<td>47</td>
<td>Repairs and Alterations</td>
<td>2,500</td>
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<tr>
<td>48</td>
<td>Equipment</td>
<td>10,000</td>
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<tr>
<td>49</td>
<td>Subtotal</td>
<td>948,670</td>
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#### Mental Retardation

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<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>50</td>
<td>Personal Services</td>
<td>80,000</td>
</tr>
<tr>
<td>51</td>
<td>Current Expenses</td>
<td>70,000</td>
</tr>
<tr>
<td>52</td>
<td>Subtotal</td>
<td>150,000</td>
</tr>
</tbody>
</table>

#### Emergency Medical Services

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>Personal Services</td>
<td>193,700</td>
</tr>
<tr>
<td>54</td>
<td>Current Expenses</td>
<td>1,226,784</td>
</tr>
<tr>
<td>55</td>
<td>Equipment</td>
<td>4,000</td>
</tr>
<tr>
<td>56</td>
<td>Subtotal</td>
<td>1,424,484</td>
</tr>
<tr>
<td>57</td>
<td>Total</td>
<td>$22,421,451</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Mental Health Center—Princeton," "Logan-Mingo Area Mental Health Center," and "Home Health Services" at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 1978-79.

#### Solid Waste Disposal

**Acct. No. 402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$71,052</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>2 Other Expenses</th>
<th>13,380</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Total $</td>
<td>84,432</td>
</tr>
</tbody>
</table>

#### 60—Department of Veterans Affairs

**Acct. No. 403**

1. In aid of Veterans Day Patriotic Exercises $5,000
2. To be expended subject to the approval of the Department of Veterans Affairs upon presentation of satisfactory plans by the Grafton G. A. R. Post, American Legion, Veterans of Foreign Wars and Sons of Veterans.

#### 61—Department of Veterans Affairs

**Acct. No. 404**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>476,576</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>89,855</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>5,500</td>
</tr>
<tr>
<td>4 Educational opps</td>
<td>20,000</td>
</tr>
<tr>
<td>5 Veterans</td>
<td></td>
</tr>
<tr>
<td>6 Total $</td>
<td>591,931</td>
</tr>
</tbody>
</table>

#### 62—Department of Welfare

**Acct. No. 405**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>9,371,250</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>4,474,504</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>46,865</td>
</tr>
<tr>
<td>4 Public Assistance Grants</td>
<td>15,944,244</td>
</tr>
<tr>
<td>5 Social Security Matching Fund</td>
<td>580,460</td>
</tr>
<tr>
<td>6 Services to Children, Aged, Blind and Disabled</td>
<td>14,540,898</td>
</tr>
<tr>
<td>7 Emergency Assistance Program</td>
<td>1,550,000</td>
</tr>
<tr>
<td>8 Direct Medical Services</td>
<td>25,200,000</td>
</tr>
<tr>
<td>9 T.R.I.P.—Tickets</td>
<td>0</td>
</tr>
<tr>
<td>10 Total $</td>
<td>71,708,221</td>
</tr>
</tbody>
</table>

#### 63—State Commission on Aging

**Acct. No. 406**

<table>
<thead>
<tr>
<th>1 Personal Services</th>
<th>78,277</th>
</tr>
</thead>
</table>

### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>53,922</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>822</td>
</tr>
<tr>
<td>4 Programs for Elderly</td>
<td>1,000,000</td>
</tr>
<tr>
<td>5 Senior Citizens Centers</td>
<td>500,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 1,633,021</td>
</tr>
</tbody>
</table>

7 The above appropriation “Senior Citizens Centers” shall be used for repair and renovation of existing Senior Citizens Centers.

64—Department of Welfare—West Virginia Children’s Home

**Acct. No. 412**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 160,500</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>94,182</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>17,600</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>10,860</td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 283,142</td>
</tr>
</tbody>
</table>

65—Greenbrier School for Mentally Retarded Children

**Acct. No. 414**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 812,543</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>206,379</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>100,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>54,800</td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 1,173,722</td>
</tr>
</tbody>
</table>

66—State Health Department—Mental Hospitals

**Acct. No. 416**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 16,333,375</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>5,138,907</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>630,280</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>328,421</td>
</tr>
<tr>
<td>5 Student Nurse Affiliation Program</td>
<td></td>
</tr>
<tr>
<td>6 (Huntington)</td>
<td>55,550</td>
</tr>
<tr>
<td>7 Psychiatric Training Center—Student Nurses</td>
<td></td>
</tr>
<tr>
<td>8 (Weston)</td>
<td>165,375</td>
</tr>
</tbody>
</table>
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

The Director of Health, prior to the beginning
of the fiscal year, shall file with the Legisla-
tive Auditor an expenditure schedule for
each formerly separate spending unit which
has been consolidated into the above account
and which receives a portion of the above ap-
propriation. He shall also, within fifteen
days after the close of each six-month period
of said fiscal year, file with the Legislative
Auditor an itemized report of expenditures
made during the preceding six-month period.
Such report shall include the total of ex-
penditures made under each of line items
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
<table>
<thead>
<tr>
<th>Account No.</th>
<th>69—Welch Emergency Hospital</th>
<th>70—Andrew S. Rowan Memorial Home</th>
<th>71—Hopemont State Hospital</th>
<th>72—Pinecrest State Hospital</th>
</tr>
</thead>
<tbody>
<tr>
<td>426</td>
<td>$1,033,275</td>
<td>$754,162</td>
<td>$3,227,569</td>
<td>$2,894,243</td>
</tr>
<tr>
<td>427</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>430</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>431</td>
<td></td>
<td></td>
<td></td>
<td>$900,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$105,400</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appropriations</th>
<th>[Ch. 4]</th>
<th>Appropriations</th>
<th>[Ch. 4]</th>
<th>Appropriations</th>
<th>[Ch. 4]</th>
<th>Appropriations</th>
<th>[Ch. 4]</th>
<th>Appropriations</th>
<th>[Ch. 4]</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Repairs and Alterations</td>
<td>$10,100</td>
<td>3 Repairs and Alterations</td>
<td>$90,000</td>
<td>3 Repairs and Alterations</td>
<td>$10,459</td>
<td>4 Equipment</td>
<td>$31,965</td>
<td>4 Equipment</td>
<td>$57,200</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,271,972</td>
<td>4 Equipment</td>
<td>$70,650</td>
<td>4 Equipment</td>
<td>$70,650</td>
<td>4 Equipment</td>
<td>$4,059,119</td>
<td>4 Equipment</td>
<td>$70,650</td>
</tr>
<tr>
<td>5 Total</td>
<td>$862,348</td>
<td>5 Total</td>
<td>$1,568,275</td>
<td>5 Total</td>
<td>$4,059,119</td>
<td>5 Total</td>
<td>$2,894,243</td>
<td>5 Total</td>
<td>$4,059,119</td>
</tr>
</tbody>
</table>
### 73—Denmar State Hospital

**Acct. No. 432**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,972,551</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>681,579</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>84,600</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>150,700</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,889,430</strong></td>
</tr>
</tbody>
</table>

### 74—State Board of Education—Rehabilitation Division

**Acct. No. 440**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,970,366</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>520,500</td>
</tr>
<tr>
<td>3 Rehabilitation Center</td>
<td>1,986,352</td>
</tr>
<tr>
<td>4 Case Services</td>
<td>2,456,424</td>
</tr>
<tr>
<td>5 Supervisory Services for Vending Stand Pro-</td>
<td></td>
</tr>
<tr>
<td>gram for Blind</td>
<td>190,982</td>
</tr>
<tr>
<td>6 Training and Special Projects</td>
<td>666,286</td>
</tr>
<tr>
<td>7 Social Security Matching Fund</td>
<td>204,995</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,995,905</strong></td>
</tr>
</tbody>
</table>

### BUSINESS AND INDUSTRIAL RELATIONS

#### 75—Bureau of Labor and Department of Weights and Measures

**Acct. No. 450**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$895,357</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>233,363</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>89,000</td>
</tr>
<tr>
<td>4 Labor Management Advisory Council</td>
<td>25,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,242,720</strong></td>
</tr>
</tbody>
</table>
76—Interstate Mining Compact Commission
Acct. No. 451

1  Total..............................................$ 10,000

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 approp-
10  riation for “Subsidence-Federal Matching” at the close of the fiscal year 1977-78 is
11  hereby reappropriated for expenditure during
12  the fiscal year 1978-79.

78—Ohio River Basin Commission
Acct. No. 469

1  Total................................................ $ 21,600

79—Council of State Governments
Acct. No. 472

1  Total................................................ $ 29,290

80—Interstate Commission on Potomac River Basin
Acct. No. 473

1  West Virginia’s contribution to Potomac River Basin Interstate Commission $ 12,450

81—Ohio River Valley Water Sanitation Commission
Acct. No. 474

1  West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission $ 40,575
### 82—Southern Regional Education Board

Acct. No. 475

1. West Virginia's contribution to Southern Regional Education Board $ 64,000
2. 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 Education Compact $ 14,250
2. To be expended upon requisition of the Governor.

### 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
Any unexpended balance remaining in the appropriation “Airport Matching” at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during fiscal year 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 ............. —0—
6 Program .......................................................... —0—

7 Total .......................................................... $ 2,023,645

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

Any unexpended balance remaining in the appropriation for “Marijuana and Multiflora
13 Rose Eradication Program" at the close of the fiscal year 1977-78 is hereby reappropriated 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 |
| **Total** | **$2,307,512** |

7 Any appropriated balance remaining in the appropriation "Unclassified" at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the fiscal year 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 |
| **Total** | **$382,232** |

5 Any unexpended balance remaining in the appropriation for "Watershed Program," "Mud River Flood Control Project" and "Channelization of Kelley's Creek" herein-after known as "Stream Channelization" at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the 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
# Appropriations

**Ch. 4**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Equipment</td>
<td>94,500</td>
</tr>
<tr>
<td>5 Special Studies</td>
<td>650,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,738,094</strong></td>
</tr>
</tbody>
</table>

**96—Department of Natural Resources**

**Acct. No. 565**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$5,919,466</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>1,600,000</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>373,040</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>436,566</td>
</tr>
<tr>
<td>5 Clarke-McNary Fire Prevention</td>
<td>700,000</td>
</tr>
<tr>
<td>6 Water Resources Board and Reclamation Board</td>
<td>30,000</td>
</tr>
<tr>
<td>7 Implementation of Federal Surface Mine Legislation</td>
<td>425,000</td>
</tr>
<tr>
<td>8 Clean Water Act of 1977</td>
<td>400,000</td>
</tr>
<tr>
<td>9 Repairs, Replacement of Equipment and Furnishings on Existing Facilities</td>
<td>2,000,000</td>
</tr>
<tr>
<td>10 Debt Service</td>
<td>975,000</td>
</tr>
<tr>
<td>11 Special Works Program</td>
<td>350,000</td>
</tr>
<tr>
<td>12 Laurel Lake Public Hunting and Fishing</td>
<td>70,000</td>
</tr>
<tr>
<td>13 Big Ugly Public Hunting Grounds</td>
<td>50,000</td>
</tr>
<tr>
<td>14 Cass Scenic Railroad (Operation)</td>
<td>80,000</td>
</tr>
<tr>
<td>15 Kanawha State Forest</td>
<td>435,000</td>
</tr>
<tr>
<td>16 Reeds Creek Hatchery</td>
<td>600,000</td>
</tr>
<tr>
<td>17 Big Ditch—Improvements</td>
<td>60,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$14,504,072</strong></td>
</tr>
</tbody>
</table>

The purpose of this bill is to provide
12 state general revenue moneys to match Federal Funds, county funds, municipal funds, board of education funds, or any combination thereof, for the establishment of the "National Track and Field Hall of Fame." Such moneys may be transferred to a special fund to match and aid Federal Funds or other of the aforesaid funds and for disbursement therefrom.

98—Water Development Authority

Acct. No. 567

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$117,537</td>
</tr>
<tr>
<td>2 Operating Expenses</td>
<td>$47,067</td>
</tr>
<tr>
<td>3 Capital Outlay</td>
<td>$2,559,000</td>
</tr>
<tr>
<td>4 Phase III Hardship Grants</td>
<td>$2,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,723,604</strong></td>
</tr>
</tbody>
</table>

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

99—West Virginia Railroad Maintenance Authority

Acct. No. 569

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$66,566</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$60,247</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$1,766</td>
</tr>
<tr>
<td>4 South Branch and Greenbrier Line Sub Div.</td>
<td>$300,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$428,579</strong></td>
</tr>
</tbody>
</table>

6 Any unexpended balance remaining in the appropriation "South Branch Line" at the close of the fiscal year 1977-78 is hereby reappropriated for expenditure during the 1978-79 fiscal year.
### APPROPRIATIONS [Ch. 4]

#### PROTECTION

100—*Department of Public Safety*

**Acct. No. 570**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 10,139,268</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>3,828,082</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>242,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>1,706,821</td>
</tr>
<tr>
<td>5 Emergency Fund</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 15,926,171</td>
</tr>
</tbody>
</table>

#### Adjutant General—State Militia

**Acct. No. 580**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 179,996</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>401,597</td>
</tr>
<tr>
<td>3 Employee Classification Program</td>
<td>574,078</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>1,572,000</td>
</tr>
<tr>
<td>5 Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 3,025,731</td>
</tr>
</tbody>
</table>

#### MISCELLANEOUS BOARDS AND COMMISSIONS

102—*West Virginia Civil Service System*

**Acct. No. 584**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 579,134</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>300,000</td>
</tr>
<tr>
<td>3 Employee Classification Program</td>
<td>170,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$ 1,049,134</td>
</tr>
</tbody>
</table>

The director shall maintain accurate records reflecting the cost of administering the provisions of this appropriation. At the close of each quarter-year period, he shall summarize the cost and shall bill each department, com-
mission, board or agency which receives support from any funds other than General Revenue Fund for a prorata share of the administrative cost based on the relationship between the quarterly-average number of employees in the service of such department, commission, board or agency and the quarterly-average number of employees in the service of all the departments, commissions, boards and agencies of the state for the appropriate calendar quarter.

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

103—West Virginia State Board of Land Surveyors
Acct. No. 585

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

104—State Board of Professional Foresters
Acct. No. 586

1 To pay the per diem of members and other general expenses $ 800
2 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 general expenses $ 67,000
2 From Collections 67,000

106—State Board of Chiropractic Examiners
Acct. No. 588

1 To pay the per diem of members and other general expenses $ 2,000
2 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**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$250,500</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$139,000</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$10,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$399,500</strong></td>
</tr>
</tbody>
</table>

### 114—West Virginia State Board of Sanitarians

**Acct. No. 599**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To pay the per diem of members and other general expenses</td>
<td>$800</td>
</tr>
<tr>
<td>2 From Collections</td>
<td>$800</td>
</tr>
</tbody>
</table>

### 115—West Virginia Public Employees Retirement Board

**Acct. No. 614**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Employers Accumulation Fund</td>
<td>$8,000,000</td>
</tr>
<tr>
<td>2 Expenses Fund</td>
<td>$113,224</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8,113,224</strong></td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state’s share of West Virginia Public Employee’s Retirement coverage for those departments operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen’s Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Funds and/or Federal Funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balance in the various Special Revenue Funds in excess of specific appropriations.
116—West Virginia Public Employees Insurance Board

Acct. No. 615

1 Expense Fund ________________ $ 113,000
2 Public Employees Health Insurance—State Contribution ____________ 24,460,688

4 Total ______________________________________________ $ 24,573,688

The above appropriation is intended to cover the state's share of Public Employees Health Insurance costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Fund and/or Federal Funds shall pay their proportionate share of the Public Employees Health Insurance cost for their respective divisions. When specific appropriations are not made such payments may be made from the balances in the various Special Revenue Funds in excess of specific appropriations.

117—Insurance Commissioner

Acct. No. 616

1 Personal Services ________________________________ $ 440,000
2 Current Expenses ________________________________ 115,800
3 Equipment

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
ROADS AND HIGHWAYS

119—State Department of Highways

Acct. No. 641

1 Total..................................................$ 75,000,000

2 Any or all of the above appropriation may be transferred to the State Road Fund for distribution.

Sec. 2. Appropriations from other funds.—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5-A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the 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 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 available for expenditure, the balances and all...
revenues of the state road fund, including the proceeds from the sale of bonds, for the maintenance, construction and reconstruction of state roads and for other purposes in accordance with the provisions of Chapter 17, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

The State Commissioner of Highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

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

121—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,484,725</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>1,786,700</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>35,000</td>
</tr>
<tr>
<td>4 Purchase of License Plates</td>
<td>521,000</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>89,500</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching</td>
<td>141,050</td>
</tr>
<tr>
<td>7 Public Employees Health Insurance</td>
<td>89,385</td>
</tr>
<tr>
<td>8 Total</td>
<td>$4,147,360</td>
</tr>
</tbody>
</table>
### 122—State Tax Department—Gasoline Tax Division

**Acct. No. 672**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>380,662</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>119,200</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>3,500</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>23,000</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>36,163</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>26,300</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>588,825</td>
</tr>
</tbody>
</table>

### 123—Department of Education—Veterans Education

**Acct. No. 702**

**TO BE PAID FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>147,143</td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>49,026</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>196,169</td>
</tr>
</tbody>
</table>

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

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

### 124—Treasurer's Office

**Acct. No. 800**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Abandoned and Unclaimed Property—Trust and Expense Fund</td>
<td>70,900</td>
</tr>
</tbody>
</table>
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 paid out of collections of license fees as provided 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 paid from Special Revenue Fund out of collections of license fees and fines as provided by law.

6 No expenditures shall be made from this account except for hospitalization, medical care, and/or funeral expenses for persons 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 paid from Special Revenue Fund out of fees and collections as provided by law.
### Appropriations

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

**Acct. No. 814**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$565,656</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$100,000</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$40,000</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$34,222</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$53,737</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$38,000</td>
</tr>
</tbody>
</table>

**Total** $831,615

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

12 The above appropriation includes salaries and operating expenses.

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

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

**Acct. No. 8151**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,511,035</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,892,365</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$200,000</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$214,775</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$337,250</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

**Total** $10,355,425

8 The total amount of this appropriation shall be paid from Special Revenue Fund out of col-
74

APPROPRIATIONS

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
Ch. 4]

APPROPRIATIONS

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 paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law.

10 Out of the above appropriation $5,000 may be transferred to the State Water Resources Commission of the Department of Natural Resources for use in cooperation with the U. S. Geological Survey in a program of stream 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 paid from Special Revenue Fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies.
### 134—Public Service Commission—Motor Carrier Division

**Acct. No. 829**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$724,004</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$284,800</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$7,500</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$37,950</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$68,900</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$39,100</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,162,254</strong></td>
</tr>
</tbody>
</table>

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

### 135—Department of Natural Resources

**Acct. No. 830**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,866,733</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$813,465</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$152,800</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$200,000</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>$177,461</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching</td>
<td>$278,658</td>
</tr>
<tr>
<td>7 Public Employees Health Insurance</td>
<td>$170,000</td>
</tr>
<tr>
<td>8 Land Purchase and Buildings</td>
<td>$454,300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,113,417</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of fees collected by the Department of Natural Resources. Expenditures shall be limited to the amounts appropriated except for Federal Funds received and Special Funds collected
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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$320,724</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$143,325</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$8,700</td>
</tr>
<tr>
<td>Equipment</td>
<td>$22,900</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$2,483</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$18,315</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$537,193</td>
</tr>
</tbody>
</table>

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 propriations 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.
Any unexpended balances remaining in prior years and in the 1977-78 appropriation are reappropriated for expenditure 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

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

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

140—Board of Regents—Capital Improvement Fund

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

Any unexpended balances remaining in prior years and 1977-78 appropriations are hereby reappropriated for expenditure during the 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

West Virginia Institute of Technology parking facilities 200,000

Campus Development

(Reroof and replace heating and air conditioning system in science laboratory and engineering laboratory buildings) 1,050,000

Glenville State College

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
Ch. 4] Appropriations 81

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

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,200,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$2,172,530</td>
</tr>
<tr>
<td>Equipment</td>
<td>$115,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$193,600</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$304,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$148,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$6,133,130</strong></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Service</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$30,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$7,182,630</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,556,500</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$60,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$212,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$451,348</td>
</tr>
<tr>
<td>Agency Operating Expense</td>
<td>$60,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$708,728</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$550,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$12,811,706</strong></td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from Special Revenue Fund out of liquor revenues.

The above appropriation includes the salaries of store personnel, store inspectors, store operating expenses and equipment; and salaries, expenses and equipment of administration offices.

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

145—West Virginia University—Medical School

Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$29,944,443</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$18,296,650</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$1,450,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,107,410</td>
</tr>
<tr>
<td>Intern and Residency Support Program for Community Hospitals</td>
<td>$825,000</td>
</tr>
<tr>
<td>Family Practice Residency Support Program</td>
<td>$660,194</td>
</tr>
<tr>
<td>Total</td>
<td>$53,283,697</td>
</tr>
</tbody>
</table>

Special funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the Board of Regents and approval of the Governor.

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

(a) Claim against the Nonintoxicating Beer Commission:

(To be paid from General Revenue Fund)

(1) Lonnie W. Bradbury $1,569.20
9  (b) Claim against the Department of Education, Division of Vocational Education:  
10  (To be paid from General Revenue Fund)  
11  (1) Dunbar Printing Company  ...  759.20  
13  (c) Claims against the Governor’s Office of 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 Products Company  ...  808.80  
19  (d) Claims against the Department of Natural 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 & Roger Dale Thompson  ...  9,627.36  
27  (e) Claims against the Department of Corrections:  
28  (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, 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
AB/PROPRIATIONS

(g) Claim against the State Auditor:
(To be paid from General Revenue Fund)
(1) Phyllis J. Rutledge, Circuit Clerk of
Kanawha County, West Virginia
314.00

(h) Claims against the Board of Regents:
(To be paid from General Revenue Fund)
(1) Direct Mail Service Co.
750.00
(2) Jacquelyn B. Eisenberg, parent and next
friend of Mark Harrold Eisenberg
1,500.00
(3) Sanders Floor Covering, Inc.
1,819.00
(4) Thompson’s of Morgantown, Inc.
901.77

(i) Claims against the Department of Motor
Vehicles:
(To be paid from State Road Fund)
(1) Sandra S. Clemente
73.75
(2) George M. Custer
300.00
(3) IBM Corporation
123.65
(4) Moore Business Forms, Inc.
195.97
(5) Anthony R. Rosi
271.60
(6) 3M Business Products Sales, Inc.
957.50

(j) Claim against the Department of
Agriculture:
(To be paid from General Revenue Fund)
(1) Hogan Storage & Transfer Company
6,000.00

(k) Claims against the Board of Vocational
Education, Division of Vocational
Rehabilitation:
(To be paid from General Revenue Fund)
(1) Arthritis Care Associates
25.40
(2) Kanawha Valley Radiologists, Inc.
109.00
(3) New Martinsville/Wetzel County
Emergency Squad, Inc.
162.00

(1) Claim against the Department of Public
Safety:
(To be paid from General Revenue Fund)
(1) H. M. Hills, Jr. & Luis A. Loimil
105.00
79 (m) Claim against the Office of Emergency Services:
(To be paid from General Revenue Fund)
82 (1) Richard L. Weekly .......................... 2,170.83

83 (n) Claim against the State Tax Department:
(To be paid from General Revenue Fund)
85 (1) Donald M. Bondurant .......................... 5,585.34

86 (o) Claim against the Department of Welfare:
(To be paid from General Revenue Fund)
88 (1) Thomas F. Lambert ......................... 457.60

89 (p) Claims against the Department of Highways:
(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 & 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 & Betty L. Cummings .................. 1,030.00
112 (19) Billy Joe Davis ............................ 750.00
113 (20) Frank Davis and Billy Joe Davis, 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. Grimmett ........................ 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, 365.00
124 d/b/a Hastings Stables .............................
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 15,000.00
140 of Glen Hartsel Norvell, deceased .............
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
87

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

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

Sec. 5.—Appropriations from revenue sharing trust fund.
The following items are hereby appropriated from the
Revenue Sharing Trust Fund to be available for expendi-
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
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 assistance trust fund.—Moneys received by the State of West Virginia pursuant to the provisions of the “Public Works Employment Act of 1976; Title II of Public Law 94-369,” as amended by the “Intergovernmental Antirecession Assistance Act of 1977; Public Law 95-30,” enacted by the Congress of the United States, shall be deposited in the State Treasury and kept in a separate account entitled “Countercyclical Fiscal Assistance Trust Fund.”

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

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

Acct. No. 8012

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>T.R.I.P.</td>
<td>$500,000</td>
</tr>
<tr>
<td>Health Planning, Licensure and Development</td>
<td>500,000</td>
</tr>
<tr>
<td>Department of Highways</td>
<td></td>
</tr>
<tr>
<td>General Operations—Personal Services</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td>$4,050,000</td>
</tr>
</tbody>
</table>

The above appropriations are to be expended pursuant to the requirements of the above public laws. In the event any of the above items are declared ineligible for expenditure under said public laws, the amount appropriated to such ineligible item may be redesignated, committed and expended for eligible projects as determined by the Governor.

The above items and funds in excess of the amounts herein appropriated, after actual re-
Ch. 4] Appropriations

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.
(a) An estimate of the amount and sources of all revenues accruing to such fund.

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

Sec. 9. State improvement fund appropriation.—Bequests or donations of nonpublic funds received by the Governor on behalf of the State during the fiscal year one thousand nine hundred seventy-eight, for the purpose of making studies and recommendations relating to improvements of the administration and management of spending units in the executive branch of State Government, shall be deposited in the State Treasury in a separate account therein designated “State Improvement Fund.”

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

Sec. 10. Specific funds and collection accounts.—A fund or collection account, which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account, and shall be expended according to the provisions of Chapter 12, Article 3 of the Code of West Virginia.

Sec. 11. Appropriation for refunding erroneous payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which was paid for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his requisition upon the Auditor for the refunding of the proper amount. The auditor shall issue his warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.
Sec. 12. Sinking fund deficiencies.—There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia Housing Development Fund which is under the supervision and control of the state sinking fund commission as provided by Chapter 31, Article 18, Section 20b of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, or in the funds of the state sinking fund commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligations bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the state sinking fund commission as may be necessary for these purposes.

The state sinking fund commission shall reimburse the State of West Virginia through the Governor from the first remittance collected from the West Virginia Housing Development Fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for the security or payment of which the advance was made.

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

There is hereby appropriated from the cigarette tax revenues for administration and enforcement of the law relating to said tax, a sum not to exceed one and one-half percent of the total revenues collected. All such salaries and expenses, authorized by law as aforesaid, shall be paid by the tax commissioner through the State Treasury out of the gross collections.

Sec. 14. Appropriations to pay costs of publication
2 of delinquent corporations.—There is hereby appropriated out of the State Fund, General Revenue, out of funds not otherwise appropriated to be paid upon requisitions of the Auditor and/or the Governor, as the case may be, a sum sufficient to pay the cost of publication of delinquent corporations as provided by Chapter 11, Article 12, Sections 84 and 86 of the Code of West Virginia.

Sec. 15. Appropriations for local governments.—There is hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due county, district and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

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

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

Title 3. Administration.
§1. Appropriations conditional.
§2. Constitutionality.

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

Where former spending units have been absorbed by or combined with other spending units by acts of this Legislature, it is the intent of this act that reappropriation shall be
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:

LEGAL
24—Attorney General

Acct. No. 240

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Personal Services</td>
<td>$971,582</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>145,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>29,000</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2. Appropriations from Other Funds.</td>
</tr>
<tr>
<td>122—State Department of Highways Acct. No. 670</td>
</tr>
<tr>
<td>TO BE PAID FROM STATE ROAD FUND</td>
</tr>
<tr>
<td>1 Maintenance Expressway, Trunkline and Feeder</td>
</tr>
<tr>
<td>2 Maintenance State Local Services</td>
</tr>
<tr>
<td>3 Inventory Revolving</td>
</tr>
<tr>
<td>4 Equipment Revolving</td>
</tr>
<tr>
<td>5 General Operations</td>
</tr>
<tr>
<td>6 Debt Service</td>
</tr>
<tr>
<td>7 Interstate Construction</td>
</tr>
<tr>
<td>8 Other Federal Aid Programs</td>
</tr>
<tr>
<td>9 Appalachian Programs</td>
</tr>
</tbody>
</table>
The purpose of this bill is to supplement, amend and transfer certain moneys from items of the existing appropriations to other items of such appropriations for the designated spending unit, and to reflect the total spending authority of the spending unit for the 1977-78 fiscal year, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure in such fiscal year shall be available for expenditure upon the effective date of this bill.

CHAPTER 9
(H. B. 1350—By Mr. Singleton)

[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.


1 The deputy commissioner of banking shall be appointed by and be under the supervision and direction of the commissioner of banking. The deputy commissioner's tenure in office shall be at the will and pleasure of the commissioner.
The deputy commissioner's salary shall be fixed annually by
the commissioner and shall be payable in installments as
provided by law.

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

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

In the event of a vacancy in the office of commissioner
or in the event of the disability or absence from the state
of the commissioner, the deputy commissioner shall have and
may exercise all of the authority and powers of the com-
missioner and shall be responsible for the performance of
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.

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

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

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

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

(a) There is hereby created the West Virginia board of banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than twenty-five million dollars, one shall be truly representative of such state banking institutions having total assets greater than twenty-five million dollars but not greater than fifty million dollars, and one shall be truly representative of such banking institutions having total assets greater than fifty million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity or any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for
overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his duties each member shall take and subscribe to the oath required by section 5, article IV, of the constitution of the state of West Virginia. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is or was at any time in the preceding twelve months a director, officer, owner, partner, employee, member or stockholder. A member may disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.
(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other 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.

(a) No banking institution shall hereafter be incorporated unless it shall have a bona fide subscribed capital stock of:

(1) At least fifty thousand dollars, if the population of the community in which the bank is to be located be not more than three thousand;

(2) At least seventy-five thousand dollars, if the population of the community in which the bank is to be located be more than three thousand, but not more than six thousand;

(3) At least one hundred thousand dollars, if the population of the community in which the bank is to be located
be more than six thousand but not more than twenty-five thousand;

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

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

The population figures as herein specified shall be ascertainable from and be based upon the latest available United States census.

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

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

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


1. As used in this article:

2. (1) "Charitable organization" means a person which is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization, or any person which solicits or obtains contributions solicited from the public for charitable purposes or any person who in any manner employs any appeal for contributions which may be reasonably interpreted to suggest that such contributions will be used for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state is a charitable organization for the purposes of this article. This definition shall not be deemed to include religious organizations or any group affiliated with and forming an integral part of said organization no part of the net income of which inures to direct benefit of any individual and which have received a declaration of current tax exempt status from the government of the United States nor shall this definition include any single church congregation located in the county or local congregation of any religious affiliation or any municipal-wide or county-wide little league or similar youth athletic organization or any service club. No such affiliated group may be required to obtain such declaration if the parent or principal organization shall have obtained same.
(2) "Contributions" means the promise or grant of any money or property of any kind or value.

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

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

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

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

(7) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through their agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions
but does not qualify as "professional fund-raising counsel"
within the meaning of this article. A bona fide salaried
officer or employee of a charitable organization main-
taining a permanent establishment within the state
shall not be deemed to be a professional solicitor.

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

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

CHAPTER 14
(Com. Sub. for S. B. 364—By Mr. Hamilton, Mr. Gainer,
Mr. Kusie, 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


ARTICLE 1. PURPOSES; DEFINITIONS.
§49-1-1. Purpose.
(a) The purpose of this chapter is to provide a comprehensive system of child welfare throughout the state which will assure to each child such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental and physical welfare of the child; preserve and strengthen the child’s family ties whenever possible with recognition to the fundamental rights of parenthood and with recognition of the state’s responsibility to assist the family in providing the necessary education and training and to reduce the rate of juvenile delinquency and to provide a system for the rehabilitation or detention of juvenile delinquents and protect the welfare of the general public. In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child’s welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his own family, to secure for him custody, care and discipline consistent with the child’s best interests and other goals herein set out.
(b) The child welfare service of the state shall be administered by the state department of welfare and the
licensing board created by section four-a, article two of this chapter.

The state department of welfare is designated as the agency to cooperate with the United States department of health, education and welfare and United States department of justice in extending and improving child welfare services, to comply with regulations thereof, and to receive and expend federal funds for these services.


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

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

"Abused child" means a child:

1. Whose parent, guardian or custodian inflicts or attempts to inflict or allows to be inflicted as a result of inadequate supervision, physical injury or substantial emotional injury upon the child which endangers the present physical or mental health of such child or inflicts, attempts to inflict, or knowingly allows to be inflicted sexual abuse upon the child.

"Neglected child" means a child:

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

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

"Neglected child" does not mean a child:
22 (1) Whose parent, guardian or custodian has failed to provide him with medical care because such medical care conflicts with the tenets and practices of a recognized or religious denomination or order of which such parent, guardian or custodian is an adherent or member; or

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

§49-1-4. “Delinquent child” defined.

1 “Delinquent child” means a child:

   (1) Who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult, punishable by confinement in a jail or imprisonment;

   (2) Who commits an act designated a crime under a municipal ordinance or state law not punishable by confinement in a jail or imprisonment;

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

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

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

§49-1-5. Definitions of other terms.

1 For the purposes of this chapter:

   (1) “State department” means the state department of welfare;

   (2) “State board” means the state advisory board;

   (3) “Commissioner” means the commissioner of welfare;

   (4) “Child welfare agency” means any agency or institution maintained by a municipality or county, or any agency or institution maintained by a person, firm,
corporation, association or organization to receive children for care and maintenance or for placement in a family home or day care center or any institution that provides care for unmarried mothers and their children, but shall not include county shelters established and maintained for the detention of delinquent children or those charged with delinquency;

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

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

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

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

(9) "Guardian" means a person who has care and custody of a child as a result of any contract, agreement or legal proceeding.

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


Children paroled from state institutions and homes for juveniles shall be paroled to the state department. Therefore, unless the court which committed the child otherwise provides, the state department shall, notwithstanding any other provision of this code, have supervisory control over every child so paroled, and shall have authority
to revoke the parole or to discharge the child from parole. Upon the revocation of any parole and the return of the parolee to the institution from which he was paroled, all authority over the parolee, originally vested 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.
§49-5-15. 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.

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

If during a criminal proceeding against a person in any court, it shall be ascertained or shall appear that the person is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court, and the circuit court shall assume jurisdiction of the case in the same manner as cases originally instituted in the circuit court
by petition: Provided, That for violation of a traffic law of West Virginia, magistrate courts shall have concurrent jurisdiction with the circuit court, and persons under the age of eighteen years shall be liable for punishment for violation of such traffic laws in the same manner as adults except that magistrate courts shall have no jurisdiction to impose a sentence of confinement for the violation of traffic laws.

As used in this section, "violation of a traffic law of West Virginia" means violation of any law contained in chapter seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code except sections one and two, article four (hit and run) and sections one (negligent homicide), two (driving under influence of alcohol, controlled substances or drugs) and four (reckless driving), article five, chapter seventeen-c of this code.

(b) Any child shall be entitled to be admitted to bail or recognizance in the same manner as a person over the age of eighteen years and shall have the protection guaranteed by article three of the constitution of West Virginia.

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

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

Except as herein modified, at all adjudicatory hearings, the rules of evidence applicable in criminal cases shall apply, including the rule against written reports.
based upon hearsay. Unless otherwise specifically pro-
vided in this chapter, all procedural rights afforded adults
in criminal proceedings shall be applicable. Extra-judicial
statements other than res gestae statements by a child
under sixteen years of age, made to law-enforcement
officials or while the child is in custody and outside the
presence of the child’s counsel shall not be admissible. A
transcript or recording shall be made of all transfer, ad-
judicatory and dispositional hearings. At the conclusion
of any hearing, the court shall make findings of fact and
conclusions of law, and the same shall appear of record.

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

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

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

§49-5-lb. Jurisdiction of municipal courts over persons under
eighteen years of age.

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

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

As used in this article, a “child” shall include a per-
son under the age of eighteen years or a person subject
to the juvenile jurisdiction of the court pursuant to this section. If a child sixteen years of age or older commits an act which if committed by an adult would be a crime and for such act is adjudged delinquent, the jurisdiction of the court shall continue until the child becomes twenty years of age with the same power over the child that the court had prior to the child's becoming an adult, and the further power to sentence such person to not more than six months in jail if the offender is over the age of eighteen years. This shall not preclude the exercise of criminal jurisdiction in case the offender, after becoming an adult, commits a violation of law. A child may be brought before the circuit court for proceedings under this article by the following means and no others:

(a) By juvenile petition praying that the child be adjudged neglected or delinquent;

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

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

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

The court at any time, or the state department or other official upon a request from a parent, guardian, or custodian, may, without institution of proceedings under this article, refer a child alleged to be delinquent to a counselor at the state department or a community mental health center or other professional counselor in the community. In the event the child refuses to respond to such reference the state department may serve a notice by first-class mail or personal service of process upon the child, setting forth the facts and stating that the department will seek a noncustodial order from the court direct-
ing the child to submit to counseling. The notice shall set forth the time and place for the hearing on the matter. The court or referee after hearing may direct the child to participate in a noncustodial period of counseling not to exceed six months. No information obtained as the result of such counseling shall be admissible in a subsequent proceeding under this article except a dispositional pro-
ceeding.

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

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

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

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

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

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

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

(a) A petition alleging that a child is a delinquent child may be filed by a person who has knowledge of or information concerning the facts alleged. The petition shall be verified by the petitioner, shall set forth the name and address of the child's parents, guardians or custodians known to the petitioner unless the petitioner is the natural parent, guardian or custodian and shall be filed in the circuit court in the county where the alleged act of delinquency occurred: Provided, That any proceeding under this chapter may be removed, for good cause shown, in accordance with the provisions of section one, article
nine, chapter fifty-six of this code. The court may refer
the matter to a state department worker or probation
officer for preliminary inquiry to determine whether the
matter can be resolved informally without the filing of a
petition. The petition shall contain: (1) Reference to the
specific statutory provisions of this chapter which give the
court jurisdiction of the proceeding; (2) specific allega-
tions of the conduct and facts upon which the petition is
based, including the approximate time and place of the
alleged conduct; (3) a statement of the right to have
counsel appointed and consult with counsel at every stage
of the proceedings; and (4) the relief sought.

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

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

(c) The court or referee may order the issuance of a
subpoena against the person having custody and control of
the child to bring the child before the court or referee.
(d) When any case of a child charged with the commission of a crime is certified or transferred to the circuit court or brought before the court by warrant pursuant to section two of this article, the court or referee shall forthwith cause the child and his parents, guardians or custodians to be served with a petition, as provided in subsections (a) and (b) of this section. In the event the child is in custody the petition shall be served upon the child within ninety-six hours of the time custody began, or the child shall be released from custody forthwith.

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

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

(a) In proceedings instituted by the filing of a juvenile petition the circuit court may enter an order directing that a child be taken into custody only if the petition shows that grounds exist for the arrest of an adult in identical circumstances or that the health, safety and welfare of the child demand such custody. A detention hearing shall be held without delay, but in no event shall the delay exceed the next succeeding judicial day, excluding Saturday, and such child shall be released on recognizance to his parent, guardian or custodian unless findings are made as specified in subsection (d) of this section.

(b) Absent a warrant or court order, a child may be taken into custody by a law-enforcement official only if: (1) Grounds exist for the arrest of an adult in identical circumstances; (2) emergency conditions exist which in the judgment of the officer pose imminent danger to the health, safety and welfare of the child; or (3) the official has reasonable grounds to believe that the child is a runaway without just cause from the child’s parents or legal custodian and the health, safety and welfare of the child is endangered. Upon taking a child into custody, with or without a warrant or court order, the official shall: (i) Immediately notify the
child's parent, custodian or, if the parent or custodian
cannot be located, a close relative; (ii) release the child
into the custody of his parent or custodian unless the
circumstances warrant otherwise; (iii) refer the matter
to the prosecuting attorney, state department or pro-
bation officer for proceedings under this article; and
(iv) if a child is being held in custody absent a warrant
or court order, cause a warrant, petition or order, as the
case may be, to be immediately issued authorizing the
detention of such child.

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

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

(d) A child in custody must immediately be taken
before a referee or judge of the circuit court and in no
event shall a delay exceed the next succeeding judicial
day: Provided, That if there be no judge or referee then
present in the county, then such child shall be taken
immediately before any magistrate in the county for
the sole purpose of holding a detention hearing. The
judge or referee shall inform the child of his right to
remain silent, that any statement may be used against
him and of his right to counsel, and no interrogation
shall be made without the presence of a parent or
counsel. If the child or his parent, guardian or custodian
has not retained counsel, counsel shall be appointed as
soon as practicable. The referee or judge shall hear
testimony concerning the circumstances for taking the
child into custody and the possible need for detention
in accordance with section two, article five-a of this
chapter. The sole mandatory issue at the detention
hearing shall be whether the child shall be detained
pending further court proceedings. The court shall, if
advisable, and if the health, safety and welfare of the
child will not be endangered thereby, release the child
on recognizance to his parents, custodians or an appro-
priate agency; however, if warranted, the court may
require bail, except that bail may be denied in any case
where bail could be denied if the accused were an
adult.

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

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

(a) Following the filing of a juvenile petition, unless a
preliminary hearing has previously been held in conjunc-
tion with a detention hearing with respect to the same
charge contained in the petition, the circuit court or
referee shall hold a preliminary hearing. In the event that
the child is in custody, such hearing shall be held within
seven days of the time the child is taken into custody
unless good cause be shown for a continuance. If no
preliminary hearing is held within seven days of the
time the child is taken into custody, the child shall be
released on recognizance unless the hearing has been
continued for good cause. If the judge is in another
county in the circuit, the hearing may be conducted in
such other county. The preliminary hearing may be
waived by the child, upon advice of his counsel. At the
hearing, the court or referee shall:

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

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

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

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

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

(b) The child may move to be allowed an improve-
ment period for a period not to exceed one year. If the
court is satisfied that the best interest of the child is
likely to be served by an improvement period, the court may delay the adjudicatory hearing and allow a non-custodial improvement period upon terms calculated to serve the rehabilitative needs of the child. At the conclusion of the improvement period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for an improvement period shall not be construed as an admission or be used as evidence.

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

(a) Upon written motion of the prosecuting attorney filed at least eight days prior to the adjudicatory hearing and with reasonable notice to the child, the parents, guardians, or custodians of the child, and the child's counsel, the court shall conduct a hearing to determine if juvenile jurisdiction should be waived and the proceeding should be transferred to the criminal jurisdiction of the court. Any motion filed in accordance with this section shall state, with particularity, the grounds for the requested transfer, including the grounds relied upon set forth in subsection (d) of this section, and the burden shall be upon the state to establish such grounds by clear and convincing proof. Any hearing held under the provisions of this section shall be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

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

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

(d) The court may, upon consideration of the child's mental and physical condition, maturity, emotional atti-
tude, home or family environment, school experience and
similar personal factors, transfer a juvenile proceeding
to criminal jurisdiction if there is probable cause to
believe that:

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

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

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

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

(5) A child, sixteen years of age or over, has com-
mitted an offense which would be a felony if committed
by an adult: Provided, That such child has been previously
adjudged delinquent for an offense which would be a
felony if the child were an adult.
(e) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate such findings of fact and conclusions of law in its order directing transfer.

(f) The child shall have the right to directly appeal an order of transfer to the supreme court of appeals of the state of West Virginia: Provided, That notice of intent to appeal and a request for transcript be filed within ten days from the date of the entry of any such order and the petition for appeal shall be presented to the supreme court of appeals within forty-five days from the entry of such order, and that, in default thereof, the right of appeal and the right to object to such order of transfer shall be waived and may not thereafter be asserted. The provisions of article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions shall apply to appeals under this chapter except as herein modified. The judge of the circuit court may, prior to the expiration of such period of forty-five days, by appropriate order, extend and re-extend such period for such additional period or periods, not to exceed a total extension of sixty days, as in his opinion may be necessary for preparation of the transcript: Provided, That the request for such transcript was made by the party seeking appeal within ten days of entry of such order of transfer. In the event any such notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court shall be stayed upon motion of the defendant pending final action of the supreme court of appeals thereon.

§49-5-11. Adjudication.

1 At the outset of an adjudicatory hearing, the court shall inquire of the child whether he wishes to admit or deny the allegations in the petition. The child may elect to stand mute, in which event the court shall enter a general denial of all allegations in the petition. (a) If the respondent child admits the allegations of the petition, the court shall consider the admission to be
proof of the allegations if the court finds (1) the respondent fully understands all his rights under this article, (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication and (3) the respondent in his admission has not set forth facts which constitute a defense to the allegations.

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

(c) If the allegations in the petition are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition; otherwise the petition shall be dismissed and the child discharged from custody. Findings of fact and conclusions of law addressed to all allegations in the petition shall be stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

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

The prosecuting attorney shall represent the petitioner in all juvenile proceedings before the court, referee or magistrate having juvenile jurisdiction.


(a) In aid of disposition, the juvenile probation officer or state department worker assigned to the court shall, upon request of the court, make an investigation of the environment of the child and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the child. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the child no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall con-
duct the dispositional proceeding, giving all parties an
opportunity to be heard. In disposition the court shall
not be limited to the relief sought in the petition and
shall give precedence to the least restrictive of the
following alternatives consistent with the best interests
and welfare of the public and the child:

(1) Dismiss the petition;

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

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

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

(5) Upon a finding that no less restrictive alternative
would accomplish the requisite rehabilitation of the
child, and upon an adjudication of delinquency pur-
suant to subdivision (1), section four, article one of this
chapter, commit the child to an industrial home or
 correctional institution for children. Commitments shall
not exceed the maximum term for which an adult could
have been sentenced for the same offense, with discre-
tion as to discharge to rest with the director of the
institution, who may release the child and return him to
the court for further disposition;
(6) Upon an adjudication of delinquency pursuant to subsection (3) or (4), section four, article one of this chapter, and upon a finding that the child is so totally unmanageable, ungovernable, and antisocial that the child is amenable to no treatment or restraint short of incarceration, commit the child to a rehabilitative facility devoted exclusively to the custody and rehabilitation of children adjudicated delinquent pursuant to said subsection (3) or (4). Commitments shall not exceed the maximum period of one year with discretion as to discharge to rest with the director of the institution, who may release the child and return him to the court for further disposition; or

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

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

(d) Following disposition, it shall be inquired of the respondent whether or not appeal is desired and the response transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the child or his counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

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

A dispositional order of the court may be modified:

1. Upon the motion of the probation officer, a state department official or prosecuting attorney;

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

Upon such a motion or request, the court shall conduct a review proceeding, except that if the last dispositional order was within the previous six months the court may deny a request for review. Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the child, the child's parent or custodian, the child's social worker and other persons providing assistance to the child or child's family.

If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the dispositional order to a more restrictive alternative if it finds clear and convincing proof of substantial violation. Otherwise, the dispositional order may be modified only to one of the less restrictive alternatives set forth in section thirteen of this article. No child shall be required to seek a modification order as provided in this section in order to exercise his right to seek release by habeas corpus.

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

(a) The commissioner of the state department shall, with the approval of the court, designate an employee of the state department to act as a juvenile probation officer, and when required one or more employees of the state department to act as assistant to such probation officer, and such employee or employees, when so assigned, shall perform their duties under the sole supervision and control of the court. There shall be at least one such juvenile probation officer assigned to each
county, but a juvenile probation officer may be assigned to more than one county. A juvenile probation officer shall not be considered to be a law-enforcement official under any provision of this chapter.

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

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

(1) Make investigation of the case;
(2) Furnish such information and assistance as the court or judge may require; and
(3) Take charge of the child before and after the trial, as may be directed by the court or judge.

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

(a) A child under eighteen years of age shall not be committed to a jail or police station, except that any child over fourteen years of age who has been committed to an industrial home or correctional institution may be held in the juvenile department of a jail while awaiting transportation to the institution for a period not to exceed ninety-six hours, and a child over fourteen years of age who is charged with a crime which would be a violent felony if committed by an adult, may, upon an order of the circuit court, be housed in a juvenile detention portion of a county facility, but not within sight of adult prisoners. A child charged with or found to be delinquent solely under subdivision (3), (4) or (5), section four, article one of this chapter, shall not be housed in a detention or other
facility wherein persons are detained for criminal offenses
or for delinquency involving offenses which would be
crimes if committed by an adult: Provided, That a child
who is adjudicated delinquent under subsection (5),
section four, article one of this chapter and who has
violated an order of probation or a contempt order arising
out of a proceeding wherein the child was adjudicated
delinquent for an offense which would be a crime if
committed by an adult may not be housed in a detention
or other facility wherein persons are detained who have
not been adjudicated delinquent for such offenses.

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

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

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

(1) A child shall not be punished by physical force,
deprivation of nutritious meals, deprivation of family
visits or solitary confinement;

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

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

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

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

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

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

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

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

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

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

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

The supreme court of appeals shall appoint and main-
tain a five-member panel, consisting of five persons who are willing to serve in such capacity, to visit, inspect and interview residents of all juvenile institutions, detention facilities and places in the state wherein juveniles may be held involuntarily, to make public reports of such reviews, and to perform such other duties as shall be prescribed by the governor. The members so appointed shall serve without compensation for their time, however, each member may be reimbursed for reasonable and necessary expenses in the performance of their duties under this article.

Copies of the panel's report shall be submitted annually to the president of the Senate and the speaker of the House of Delegates.

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

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

(b) Expungement shall be accomplished by physically marking the records to show that such records have been expunged, and by the secure sealing and filing of said records in such a manner that no one can determine the identity of said juvenile except as provided in subsection (d) of this section. Expungement shall have the legal effect as if the offense never occurred.

(c) The child's counsel, parent, guardian or custodian, the court, law-enforcement agencies and other public and private agencies, in response to a request for record information, shall reply that juvenile records are not
public records and are available only by order of the
circuit court in which the case was pending.

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

(1) A court having juvenile jurisdiction has the child
before it in a juvenile proceeding;

(2) A court exercising criminal jurisdiction over the
child requests such records for the purpose of a pre-
sentence report or other dispositional proceeding;

(3) The child or counsel for the child requests dis-
closure or inspection of such records;

(4) The officials of public institutions to which a child
is committed require such records for transfer, parole or
discharge considerations; or

(5) A person doing research requests disclosure, on
the condition that information which would identify the
child or family involved in the proceeding shall not be
divulged.

(e) No individual, firm, corporation or other entity
shall, on account of a person's prior involvement in a
proceeding under this article, discriminate against any
person in access to, terms of, or conditions of employ-
ment, housing, education, credit, contractual rights or
otherwise.

(f) No records of a juvenile convicted under the
criminal jurisdiction of the court pursuant to subdivi-
sion one, subsection (d), section ten of this article shall
be expunged.

(g) Any person who willfully violates this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than one thousand
dollars, or confined in jail not more than six months,
or both such fine and imprisonment, and shall be liable for damages in the amount of three hundred dollars or 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.

After a detention hearing conducted by a judge, magistrate or referee an order shall be forthwith entered setting forth the findings of fact and conclusions of law with respect to further detention pending hearing and disposition of the child proceedings involving such juvenile. A copy of such order shall be furnished to the court, if entered by a referee, and to the child and his attorney, if any, and to the parent or parents or guardian of the child. A detention order of a judge or referee shall become effective immediately, subject to the right of review provided for in section four of this article, and shall continue in effect until modified or vacated by the judge.

§49-5A-5. Detention in other counties.

If further detention is ordered, the court may order or referee direct such child to be detained in a facility other than a jail in a county other than the county in which such court sits if no facility other than a jail 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; requirements.

Upon the verified petition of any person showing: (a)
2 That any person under the age of eighteen years is threatened with or there is a substantial possibility that such person will suffer death, serious or permanent physical or emotional disability, disfigurement or suffering, and (b) that such disability, disfigurement or suffering is the result of the failure or refusal of any parent, guardian or custodian to procure, consent to or authorize necessary medical treatment, the circuit court of the county in which such person is located may direct the appointment of a special guardian for the purposes of procuring, consenting to and giving authorization for the administration of necessary medical treatment. The circuit court shall not consider any petition filed in accordance with this section unless it shall be accompanied by a supporting affidavit of a licensed physician.

§49-6B-2. Notice of petition.

1 So far as practicable, the parents, guardian or custodian of any person for whose benefit medical treatment is sought shall be given notice of the petition for the appointment of a special guardian under this article: Provided, That such notice shall not be necessary if it would cause such delay as would result in the death or irreparable harm to the person for whose benefit medical treatment is sought. Such notice may be given in such form and manner as may be necessary under the circumstances.

§49-6B-3. Discharge of special guardian.

1 Upon the termination of necessary medical treatment to any person under this article, the circuit court shall, by order, direct the discharge of the special guardian from any further authority, responsibility or duty.

§49-6B-4. Immunity from civil liability.

1 No person appointed special guardian in accordance with the provisions of this article shall be civilly liable for any act done by virtue of the authority vested in him by order of the circuit court.
ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

All records of the state department, the court and its officials, law-enforcement agencies and other agencies or facilities concerning a child as defined in this chapter shall be kept confidential and shall not be released: Provided, That such records, except adoption records, juvenile court records and records disclosing the identity of a complainant of child abuse or neglect, shall be made available (1) where authorized by this chapter; (2) to the child, parent, or the attorney of the child or parent, whether or not in connection with judicial proceedings; (3) with the written consent of the child or of someone authorized to act in the child's behalf; or (4) pursuant to subpoena or order of a court of record: Provided, however, that a subpoena for such records may be quashed if the court determines that disclosure is not for a bona fide purpose and compromises the confidentiality intended by this section. The official court file pertaining to the person who is the subject of a neglect or abuse proceeding shall be open for inspection only to the child, the child's parent or custodian, their counsel and other parties to the proceedings before the court. No record or information shall be transmitted to any federal or state agency except as specifically provided herein.

Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child shall be open to inspection pursuant to the provisions of section seventeen, article five of this chapter.

Any person who willfully violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail not more than six months, or both such fine and imprisonment, and shall be liable for damages in the amount of three hundred dollars or actual damages, 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 persons released on probation and placed in the charge of a state probation and parole officer and all persons released on parole under any law of this state with the exception of those persons paroled pursuant to section thirteen, article two, chapter forty-nine of this code. The commissioner shall have authority to revoke the parole with appropriate due process. He shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision. The commissioner shall prescribe rules and regulations for the supervision of probationers and parolees under his supervision and control, and shall succeed to all administrative and supervisory powers of the board of probation and parole and the authority of said board of probation and parole in such matters only.

19 The commissioner of corrections shall administer all other laws affecting the custody, control, treatment and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the department.

The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from such institutions pursuant to the provisions of article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall remain within the exclusive jurisdiction of the board of probation and parole.
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 commissioner shall establish a system of assistance for facilitating the adoption of children who are dependents of the department or a child welfare agency licensed to place children for adoption, legally free for adoption and in special circumstances either because they:

(a) Have established emotional ties with prospective adoptive parents while in their care; or

(b) Are not likely to be adopted by reason of one or more of the following conditions:
(1) They have a physical or mental disability;

(2) They are emotionally disturbed; or

(3) They are older children; or

(4) They are a part of a sibling group; or

(5) They are a member of a racial or ethnic minority; or

(6) They have any combination of these conditions.

The department shall provide assistance in the form of subsidies or other services to parents who are found and approved for adoption of a child certified as eligible for subsidy by the department, but before the final decree of adoption is entered, there must be a written agreement between the family entering into the subsidized adoption and the department. Adoption subsidies in individual cases may commence with the adoption placement, and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for special services only, or for money payments, and either for a limited period, or for a long term, or for any combination of the foregoing. The specific financial terms of the subsidy shall be included in the agreement between the department and the adopting parents. The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for such child under foster family care, or, in the case of a special service, the reasonable fee for the service rendered.

Whenever significant emotional ties have been established between a child and his foster parents, and the foster parents seek to adopt the child, the child shall be certified as eligible for a subsidy conditioned upon his adoption under applicable adoption procedures by the foster parents.

In all other cases, after reasonable efforts have been made without the use of subsidy and no appropriate adoptive family has been found for the child, the department shall certify the child as eligible for a subsidy in the event of adoption.

If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of significant emotional ties between the child and
his foster parents or evidence of inability to place the child
for adoption. In no event shall the value of the services
and assistance provided by the department under an agree-
ment pursuant to this section exceed the value of assistance
available to foster families in similar circumstances. All
records regarding subsidized adoptions shall be held in
confidence, however, records regarding the payment of public
funds for subsidized adoptions shall be available for public
inspection provided they do not directly or indirectly identify
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.

The Legislature has considered the findings of fact and
recommendations reported to it by the court of claims con-
cerning various claims against the state and agencies thereof,
and in respect to each of the following claims the Legislature
adopts those findings of fact as its own, and hereby declares
it to be the moral obligation of the state to pay each such
claim in the amount specified below, and directs the auditor
to issue warrants for the payment thereof out of any fund
appropriated and available for the purpose.

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

(b) Claim against the Department of Education,
Division of Vocational Education:
(To be paid from General Revenue Fund)
(1) Dunbar Printing Company $759.20

(c) Claims against the Governor’s Office of
Economic and Community Development:
(To be paid from General Revenue Fund)
(1) Jones Printing Company, Inc. $235.00
(2) Sam Siclair, d/b/a Galion Canvas Products Company $808.80

(d) Claims against the Department of Natural
Resources:
(To be paid from General Revenue Fund)
(1) Mrs. Richard L. Cooper $475.00
(2) Raleigh Motor Sales, Inc. $1,452.36
(3) Jerry Austin Rexrode $2,943.72
(4) Edith Ann Thompson & Roger Dale Thompson $9,627.36

(e) Claims against the Department of
Corrections:
(To be paid from General Revenue Fund)
(1) Boone Remodeling Co. $16,930.00
(2) Cecil E. Jackson Equipment, Inc. $415.24
(3) Friden Mailing Equipment Corporation $147.00
(4) S. B. Wallace & Co. $157.49
38  (f) Claims against the Department of Health,  
Division of Mental Health:  
(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:  
(To be paid from General Revenue Fund)  
49  (1) Phyllis J. Rutledge, Circuit Clerk of  
Kanawha County, West Virginia .......... $ 314.00  
51  (h) Claims against the Board of Regents:  
(To be paid from General Revenue Fund)  
53  (1) Direct Mail Service Co. ................... $ 750.00  
54  (2) Jacquelyn B. Eisenberg, parent and next  
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  
Vehicles:  
(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  
Agriculture:  
(To be paid from General Revenue Fund)  
70  (l) Hogan Storage & Transfer Company .... $ 6,000.00
### Claims Against the State

#### (k) Claims against the Board of Vocational Education, Division of Vocational Rehabilitation:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claim Against</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arthritis Care Associates</td>
<td>$25.40</td>
</tr>
<tr>
<td>Kanawha Valley Radiologists, Inc.</td>
<td>$109.00</td>
</tr>
<tr>
<td>New Martinsville/Wetzel County Emergency Squad, Inc.</td>
<td>$162.00</td>
</tr>
</tbody>
</table>

#### (l) Claim against the Department of Public Safety:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claim Against</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>H. M. Hills, Jr. &amp; Luis A. Loimil</td>
<td>$105.00</td>
</tr>
</tbody>
</table>

#### (m) Claim against the Office of Emergency Services:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claim Against</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Richard L. Weekly</td>
<td>$2,170.83</td>
</tr>
</tbody>
</table>

#### (n) Claim against the State Tax Department:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claim Against</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Donald M. Bondurant</td>
<td>$5,585.34</td>
</tr>
</tbody>
</table>

#### (o) Claim against the Department of Welfare:
(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claim Against</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thomas F. Lambert</td>
<td>$457.60</td>
</tr>
</tbody>
</table>

#### (p) Claims against the Department of Highways:
(To be paid from State Road Fund)

<table>
<thead>
<tr>
<th>Claim Against</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elvin S. Alford</td>
<td>$2,800.00</td>
</tr>
<tr>
<td>Curtis Allison</td>
<td>$244.85</td>
</tr>
<tr>
<td>David E. Alvis</td>
<td>$99.85</td>
</tr>
<tr>
<td>Appalachian Power Co.</td>
<td>$2,303.35</td>
</tr>
<tr>
<td>Frank G. Barr</td>
<td>$595.68</td>
</tr>
<tr>
<td>Olie G. Bastin and Priscilla Bastin</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>Raymond N. Belmont</td>
<td>$80.00</td>
</tr>
<tr>
<td>Downer B. Boley</td>
<td>$926.83</td>
</tr>
<tr>
<td>Boone Sales, Inc.</td>
<td>$1,100.00</td>
</tr>
<tr>
<td>Charles A. Bowman</td>
<td>$154.50</td>
</tr>
</tbody>
</table>
(11) Minnie Lee Brown ................................ $ 4,500.00
(12) Darrell E. Buckner & Betty S. Buckner ................................ $ 63.46
(13) Eleanor F. Charbeneau & Eleanor B. Charbeneau .......................... $ 253.45
(14) David L. Clark, Sr. ........................................ $ 5,572.00
(15) Michael H. Coen and Ruth Coen ............................... $ 65,000.00
(16) Ishmael Collins ........................................................... $ 500.00
(17) Virginia Sue Cook .................................................. $ 112.27
(18) Clyde W. Cummings & Betty L. Cummings ......................... $ 1,030.00
(19) Billy Joe Davis .......................................................... $ 750.00
(20) Frank Davis and Billy Joe Davis, d/b/a Davis Auto Parts ........... $ 21,125.00
(21) Clarence V. Eastes, Jr. .............................................. $ 144.20
(22) Albert D. Fentress and Hazel S. Fentress ........................ $ 122.68
(23) Bradford G. Frazier .................................................. $ 160.48
(24) Timothy J. Grimmett .................................................. $ 271.44
(25) Michael J. Hart ....................................................... $ 46.49
(26) Hartford Accident & Indemnity Company ................................ $ 21,326.50
(27) Robert M. Hastings & Linda Hastings, d/b/a Hastings Stables .......... $ 365.00
(28) Barbara Henson ....................................................... $ 128.14
(29) Clifford E. Honsaker, Jr. ........................................... $ 10.14
(30) Kermit Reed Hubbs ................................................... $ 435.90
(31) McHenry Hudnall, Jr. ................................................ $ 147.73
(32) Robert H. Johnson .................................................... $ 900.00
(33) Marvin Kidd ........................................................... $ 52.50
(34) Moses Kolesar ........................................................ $ 6,500.00
(35) Theodore Korthals & Emile Korthals ................................ $ 3,500.00
(36) Eugene Lafferty and Wanda Lafferty ................................ $ 10,500.00
(37) Linda Lester and Leon Lester ........................................ $ 187.63
(38) Gerald J. Lynch ........................................................ $ 206.76
(39) Hugh C. Mayfield ..................................................... $ 400.00
(40) Arthur Maynard and Mollie Maynard ................................ $ 2,475.00
(41) Norman Maynard & Shirley Maynard ................................ $ 1,250.00
(42) Helen L. Norvell, Executrix of the Estate of Glen Hartsel Norvell, deceased $ 15,000.00
CLAIMS AGAINST THE STATE

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

The Legislature finds that the above moral obligations and
the appropriation made in satisfaction thereof shall be the full
compensation for all claimants, and that prior to the payments
to any claimant provided for in this bill, the court of claims
shall receive a release from said claimant releasing any and
all claims for moral obligations arising from the matters con-
sidered by the Legislature in the finding of the moral obliga-
tions and the making of the appropriations for said claimant.
The court of claims shall deliver all releases obtained from
claimants to the department against which the claim was
allowed.

CHAPTER 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.
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.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities and services rendered by certain claimants herein and has considered claims against the state, the department of health, department of corrections and department of motor vehicles, agencies thereof, which have arisen due to over-expenditures of departmental appropriations by officers of such state spending unit, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities and services rendered by each claimant, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants upon receipt of a properly executed requisition supported by an itemized invoice, statement or other satisfactory document as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the department of health:

(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th></th>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Lewis Edmon Cox</td>
<td>$185.64</td>
</tr>
<tr>
<td>29</td>
<td>Ruth McPherson</td>
<td>$1,267.25</td>
</tr>
<tr>
<td>30</td>
<td>John C. Racer</td>
<td>$178.80</td>
</tr>
<tr>
<td>31</td>
<td>Physicians Fee Office</td>
<td>$2,145.23</td>
</tr>
</tbody>
</table>
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, relating to the West Virginia consumer credit and protection act, definition of terms; defining two terms pertaining to debt collection practices.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-122. Definitions.

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

(a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

(b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

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

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

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 are included in Schedule I.

3 (b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

9 (1) Acetylmethadol;
10 (2) Allylprodine;
11 (3) Alphacetylmethadol;
12 (4) Alphameprodine;
13 (5) Alpharnethadol;
14 (6) Benzethidine;
15 (7) Betacetylmethadol;
16 (8) Betameprodine;
17 (9) Betamethadol;
18 (10) Betaprodine;
19 (11) Clonitazene;
20 (12) Dextromoramide;
21 (13) Diampropamide;
22 (14) Diethylthiambutene;
23 (15) Difenoxin;
24 (16) Dimenoxadol;
25 (17) Dimepheptanol;
26 (18) Dimethylthiambutene;
27 (19) Dioxaphethyl butyrate;
28 (20) Dipipanone;
29 (21) Ethylmethylthiambutene;
30 (22) Etonitazene;
31 (23) Etoxeridine;
32 (24) Furethidine;
33 (25) Hydroxypethidine;
34 (26) Ketobemidone;
35 (27) Levomoramide;
36 (28) Levophenacymorphorphan;
37 (29) Morpheridine;
38 (30) Noracymethadol;
39 (31) Norlevorphanol;
40 (32) Normethadone;
41 (33) Norpipanone;
42 (34) Phenadoxone;
43 (35) Phenamproramide;
44 (36) Phenomorphorphan;
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 another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers wherever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

57 (1) Acetorphine;
58 (2) Acetyldihydrocodeine;
59 (3) Benzylnorphorphan;
60 (4) Codeine methylbromide;
61 (5) Codeine-N-Oxide;
62 (6) Cyprenorphorphan;
63 (7) Desomorphorphan;
64 (8) Dihydromorphorphan;
65 (9) Drootebanol;
66 (10) Etorphine (except HCL Salt);
67 (11) Herin;
CONTROLLED SUBSTANCES

68 (12) Hydromorphinol;
69 (13) Methyldesorphine;
70 (14) Methyldihydromorphine;
71 (15) Morphine methylbromide;
72 (16) Morphine methylsulfonate;
73 (17) Morphine-N-Oxide;
74 (18) Myropline;
75 (19) Nicocodeine;
76 (20) Nicomorphine;
77 (21) Normorphine;
78 (22) Phoclodine;
79 (23) Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of the salts, isomers and salts of isomers of any thereof whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation and for the purposes of this subsection only, "isomer" includes the optical position and geometric isomers:

80 (1) 2,5-dimethoxyamphetamine; also known by these trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
81 (2) 3,4-methylenedioxy amphetamine;
82 (3) 4-bromo-2,5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
83 (4) 5-methyloxy-3,4-methylenedioxy amphetamine;
84 (5) 4-methoxyamphetamine; also known by these trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA;
85 (6) 3,4,5-trimethoxy amphetamine;
86 (7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine; mappine;
105 (8) Diethyltryptamine; known also by these trade and
other names: N-N-Diethyltryptamine; "DET";

107 (9) Dimethyltryptamine; known also by the name
“DMT”;

109 (10) 4-methyl-2,5-dimethoxy amphetamine; known
also by these trade and other names: 4-methyl-2,5-dime-
thoxy-a-methylphenethylamine; "DOM"; "STP";

112 (11) Iboqaine; known also by these trade and other
names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-
methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b)
indole; tabernanthe iboga;

116 (12) Lysergic acid diethylamide;

117 (13) Marihuana;

118 (14) Mescaline;

119 (15) Peyote; meaning all parts of the plant presently
classified botanically as Lophophora Williamsii Lematre,
whether growing or not; the seeds thereof; any extract
from any part of such plant; and every compound, manu-
facture, salt, derivative, mixture or preparation of such
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-
als of the substances contained in the plant or in the
resinous extractives of Cannabis or synthetic substances,
derivatives and their isomers with similar chemical struc-
ture and pharmacological activity such as the follow-
ing:

135 Delta 1

136 Cis or trans tetrahydrocannabinol, and their optical
isomers;
Delta 6

Cis or trans tetrahydrocannabinol, and their optical isomers;

Delta 3, 4

Cis or trans tetrahydrocannabinol tetrahydrocannabinol, and their optical isomers;

(21) Thiophene analog of phencyclidine; also known by these trade or other names: (A) (1-(2-thienyl) cyclo-hexyl) piperidine; (B) Thienyl analog of phencyclidine; TPCP;

(e) Unless specifically excepted or unless listed in another schedule, any of the following depressants, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

§60A-2-206. Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding nalorphine, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid extracts;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

(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 preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;
30 (3) Opium poppy and poppy straw;
31 (4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;
32 (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).
33 (c) Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:
34 (1) Alphaprodine;
35 (2) Anileridine;
36 (3) Bezitramide;
37 (4) Dihydrocodeine;
38 (5) Diphenoxylate;
39 (6) Fentanyl;
40 (7) Isomethadone;
Ch. 19] CONTROlLED SUBSTANCES

58 (8) Levomethorphan;
59 (9) Levorphanol;
60 (10) Metazocine;
61 (11) Methadone;
62 (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
63 (13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
64 (14) Pethidine; (meperidine);
65 (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
66 (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
67 (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
68 (18) Phenazocine;
69 (19) Piminodine;
70 (20) Racemethorphan;
71 (21) Racemorphan.

72 (d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

73 (1) Methamphetamine, including its salts, isomers and salts of isomers;
74 (2) Amphetamine, its salts, optical isomers and salts of its optical isomers;
75 (3) Phenmetrazine and its salts;
76 (4) Methylphenidate and its salts.

77 (e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
(1) Methaqualone;
(2) Amobarbital;
(3) Secobarbital;
(4) Pentobarbital;
(5) Phencyclidine.

§60A-2-208. Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine;
(4) Mazindol;
(5) Phendimetrazine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid;

(2) Chlorhexadol;
(3) Glutethimide;
(4) Lysergic acid;
(5) Lysergic acid amide;
(6) Methyprylon;
(7) Sulfonediethylmethane;
(8) Sulfonethylmethane;
(9) Sulfonmethane;
(10) Any compound, mixture or preparation containing:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(11) Any suppository dosage form containing:

(i) Amobarbital;
(ii) Secobarbital;
(iii) Pentobarbital.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters and not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters and not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amount;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amount;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters and not more than 15 milligrams per dosage
unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams and not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams and not more than 2.5 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

§60A-2-210. Schedule IV.

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Barbital;
(2) Chloral betaine;
(3) Chloral hydrate;
(4) Ethchlorvynol;
(5) Ethinamate;
(6) Methohexital;
(7) Meprobamate;
(8) Methylphenobarbital, as methobarbital;
(9) Paraldehyde;
(10) Petrichloral;
(11) Phenobarbital;
(12) Lorazepam;
(13) Mebutamate;
(14) Clorazepate;
(15) Chlordiazepoxide;
(16) Clonazepam;
(17) Diazepam;
27 (18) Flurazepam;
28 (19) Oxazepam;
29 (20) Prazepam.

30 (c) Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine.

36 (d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

44 (1) Diethylpropion;
45 (2) Phentermine;
46 (3) Pemoline (including organometallic complexes and chelates thereof);
48 (4) Dextropropoxyphene (alpha-(-)-4-dimethylamino-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 by law upon county commissions, such commissions are hereby authorized to establish information outlets for the dissemination of information concerning the sources of community and governmental services available to the public and to refer the members of the public to the correct source 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.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether specific real property belonging to the county or held by it for the use of any district thereof shall be conveyed or whether the buildings and improvements thereon shall be demolished.

A petition for such local option election shall be in the form hereinafter specified and shall be signed by qualified voters residing within said county equal to at least ten percent of the persons qualified to vote within said county at the last general election. For the purpose of this article, the term "qualified voters" shall mean those actually voting at the last general election and not those registered to vote. Said petition may be in any number of counterparts and shall be sufficient if substantially in the following form:

PETITION

CONVEYANCE OF COUNTY PROPERTY

AND/OR

DEMOLITION OF COUNTY BUILDINGS

OR IMPROVEMENTS

Each of the undersigned certifies that he or she is a person residing in ____________ County, West Virginia, and is duly qualified to vote in said county under the laws of the State, and that his or her name, address and the date of signing this petition are correctly set forth below.

The undersigned petition said county commission to call and hold a local option election upon the following question: Shall the county commission of __________ County, West Virginia, be authorized to convey (or demolish buildings and improvements located on) the following described real property belonging to the county or held by it for the use of a district thereof:
(here insert property description)

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>DATE</th>
</tr>
</thead>
</table>

(Each person signing must specify either his post-office address or his street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. Said county commission shall give notice of such local option election by publication in two newspapers of opposite politics and of general circulation within said county. Said notice shall be given at least once each week for two successive weeks prior to the date of said election. If there is only one newspaper published in said county, publication of said notice therein shall be sufficient.

Each person qualified to vote in said county at said primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The ballots in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the county commission of __________ County be authorized to convey (or demolish buildings and improve-
ments located on) the following described real property belonging to the county? (insert description)

☐ YES    ☐ NO

(Place a cross mark in the square opposite your choice.)"

If a majority of the voters voting at any such local option election vote "no" on the foregoing question, the county commission shall not thereafter be permitted to convey said real property or demolish the buildings and improvements thereon, as the case may be, unless thereafter authorized so to do.

Nothing herein shall prohibit the county commission from altering, improving and maintaining such real property or the buildings and improvements thereon in any manner whatsoever which does not demolish the building or improvements which were subject to the referendum.

The county commission of any county wherein a majority of the voters have refused permission to convey or demolish specific real property or buildings or improvements pursuant to this section may on its own motion initiate an election pursuant to this section at any primary or general election held in such county after the voters have refused such permission and may restate the description of property or action desired to be 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.

(a) It is hereby found and determined by the Legislature that in fulfilling their prescribed purposes and exercising their powers, including the purpose of promoting, developing and advancing the business prosperity and economic welfare of the county for which created by acquiring lands and other real property to be furnished by lease, sale or other disposition as industrial sites, county development authorities are performing essential public purposes; that the performance of such essential public purposes are frequently impeded, unduly delayed, or wholly frustrated by imperfections in the title to essential land and other real properties, by lost heirs or widely scattered owners of undivided interests in essential lands and other real properties and by owners of relatively small but essential parcels of a proposed land development site who refuse to sell their land or other real property to the county; and, that the exercise by county development authorities of the right of eminent domain within the limitations herein provided is therefore necessary and appropriate to achieve the said public purposes of county development authorities.

(b) Any county development authority heretofore or hereafter created by a county commission pursuant to the authority of this article is hereby authorized and empowered to exercise the right of eminent domain if an order of such county commission authorizing exercise of
the right of eminent domain as to any proposed acquisition is first made and entered and at least three fourths of the entire tract has either been purchased, optioned, or is under contract to be purchased: Provided, That prior to the issuance of the order by the county commission, it shall hold a public hearing on the public necessity of the exercise of eminent domain and shall cause a Class II legal advertisement to be published in accordance with the provisions of section two, article three, chapter fifty-nine, prior to the hearing: Provided, however, That a separate hearing must be held and a separate order promulgated for each parcel over which the authority wishes to exercise the power of eminent domain: Provided further, That the right of eminent domain shall not be exercised to acquire real property which exceeds one fourth of any land development site proposed by the county development authority, and the aforesaid order of a county commission shall specifically state the anticipated size of the entire site with respect to which the exercise by a county development authority of the right of eminent 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:
"Appointing officer" or "appointing sheriff" shall mean the sheriff of the county in which the appointment of a deputy sheriff shall be made pursuant to this article; and

(2) "Deputy sheriffs" or "deputies" shall mean persons appointed by a sheriff as his deputies whose primary duties as such deputies are within the scope of active, general law enforcement and as such are authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners. This definition shall not be construed to include any person or persons whose sole duties shall be the service of civil process and subpoenas as provided in section fourteen, article one, chapter fifty of this code, but such exclusion shall not preclude the service of civil process or subpoenas by deputy sheriffs covered by the provisions of this article.

(b) For the purpose of this article, population shall be determined by reference to the last preceding census taken under the authority of the United States or of the Legislature of West Virginia.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.


§50-1-7. Chief magistrates; administrative responsibility; additional 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.

In each county which has less than thirty thousand in
population there shall be elected two magistrates. In each county which has thirty thousand or more in population but less than sixty thousand in population there shall be elected three magistrates; except that in the county of McDowell there shall be elected four magistrates. In each county which has sixty thousand or more in population but less than one hundred five thousand in population there shall be elected four magistrates. In each county which has one hundred five thousand or more in population but less than two hundred thousand in population there shall be elected seven magistrates. In each county which has two hundred thousand or more in population there shall be elected ten magistrates. For the purpose of this article, the population of each county shall be considered to be the population as determined by the last preceding census taken under the authority of the United States government. No change in the number of magistrates caused by the publication of more recent such census figures shall be effective until the next regular election for such office occurring after the year of such publication.


The salary of each magistrate shall be paid by the state. Magistrates who serve less than ten thousand in population shall be paid annual salaries of ten thousand dollars. Magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid annual salaries of fourteen thousand dollars. Magistrates who serve fifteen thousand or more in population shall be paid annual salaries of eighteen thousand dollars. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. Magistrates shall be paid once a month.

§50-1-7. Chief magistrates; administrative responsibility; additional duties.

The judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, may appoint one of the magistrates, to serve at the will and pleasure
of such circuit court judge, as the chief magistrate of the county. The chief magistrate, if there is one, shall be responsible for all of the administrative functions required of the magistrate court in each county by this code and as required by rules and regulations of the supreme court of appeals. These functions shall include, but not be limited to, supervising the circuit clerk or magistrate court clerk in the establishment and maintenance of a centralized docketing system, submitting all reports required by law and promptly notifying such circuit court judge that additional magistrates are required to handle the cases then pending in the magistrate court of said county. Chief magistrates shall have the additional duties of acting as liaison between the magistrate court and the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, and such other additional duties as may be assigned by such judge.


In each county having three or more magistrates the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties such judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event said circuit court clerk shall be entitled to additional compensation in the amount of two thousand five hundred dollars per year. In any county a magistrate court clerk may be appointed prior to the first day of January, one thousand nine hundred seventy-seven. The magistrate court clerk shall serve at the will and pleasure of such circuit judge.

Magistrate court clerks shall be paid a monthly salary by the state. Magistrate court clerks serving magistrates who serve five thousand or less in population shall be paid up to five hundred dollars per month. Magistrate court clerks serving magistrates who serve more than five thousand in population but less than ten thousand in population shall be paid up to seven hundred dollars per month. Magistrate court clerks serving magistrates who serve more than ten thousand in population but less than fifteen thousand in population shall be paid up to nine hundred
dollars per month. Magistrate court clerks serving magistrates who serve fifteen thousand or more in population shall be paid up to one thousand one hundred dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate court clerk shall be established by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, within the limits set forth in this section.

In addition to such other duties as may be imposed by the provisions of this chapter or by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it shall be the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for magistrate court, to assist in the preparation of such reports as may be required of the court and to carry out on behalf of the magistrates, or chief magistrate, if a chief magistrate is appointed, the administrative duties of the court.

The magistrate court clerk or, if there is no magistrate court clerk in the county, the clerk of the circuit court shall have the authority to issue all manner of civil process and to require the enforcement of subpoenas and subpoenas duces tecum in magistrate court.


In each county there shall be one magistrate assistant for each magistrate serving magistrate court. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he shall serve. Such assistant shall not be a member of the immediate family of any magistrate, shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the county where appointed. For the purpose of this section, immediate family shall mean the relationships of mother, father, sister, brother, child or spouse.

A magistrate assistant shall have such duties, clerical or otherwise, as may be assigned by the magistrate and as may
be prescribed by the rules of the supreme court of appeals
or the judge of the circuit court, or the chief judge thereof if
there is more than one judge of the circuit court. In addition
to such duties, magistrate assistants shall perform and be
accountable to the magistrate court clerk with respect to the
following duties:

1. The preparation of summons in civil actions;
2. The assignment of civil actions to the various magis-
   trates;
3. The collection of all costs, fees, fines, forfeitures and
   penalties which may be payable to the court;
4. The submission of such moneys, along with an account-
   ing thereof, to appropriate authorities as provided by law;
5. The daily disposition of closed files which are to be
   located in the magistrate clerk’s office;
6. All duties related to the gathering of information and
   documents necessary for the preparation of administrative
   reports and documents required by the rules of the supreme
   court of appeals or the judge of the circuit court, or the
   chief judge thereof if there is more than one judge of the
   circuit court;
7. All duties relating to the notification, certification and
   payment of jurors serving pursuant to the terms of this
   chapter;
8. All other duties or responsibilities whereby the magis-
   trate assistant shall be accountable to the magistrate court
   clerk as the magistrate shall determine.

Magistrate assistants shall be paid a monthly salary by the
state. Magistrate assistants serving magistrates who serve
five thousand or less in population shall be paid up to four
hundred dollars per month. Magistrate assistants serving
magistrates who serve more than five thousand in population
but less than ten thousand in population shall be paid up to
five hundred fifty dollars per month. Magistrate assistants
serving magistrates who serve more than ten thousand in
population but less than fifteen thousand in population shall
be paid up to six hundred fifty dollars per month. Magistrate
assistants serving magistrates who serve fifteen thousand or
more in population shall be paid up to seven hundred fifty
dollars per month. For the purpose of determining the popu-
lation served by each magistrate, the number of magistrates
authorized for each county shall be divided into the popula-
lation of each county. The salary of the magistrate assistant
shall be established by the magistrate within the limits set
forth in this section.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

Whenever required by work load and upon the recom-
mandation of the judge of the circuit court, or the chief judge
thereof if there is more than one judge of the circuit court,
the supreme court of appeals may by rule provide for the
appointment of magistrate court deputy clerks, not to exceed
forty-five in number. Such magistrate court deputy clerks shall
be appointed by the judge of the circuit court, or the chief
judge thereof if there is more than one judge of the circuit
court, with such appointee to serve at his will and pleasure
under the immediate supervision of the magistrate court clerk.
Such magistrate court deputy clerk shall have such duties,
clerical or otherwise, as may be assigned by the magistrate
court clerk and as may be prescribed by the rules of the
supreme court of appeals or the judge of the circuit court, or
the chief judge thereof if there is more than one judge of the
circuit court. Such magistrate court deputy clerks shall also
have authority to exercise the power and perform the duties
of the magistrate court clerk as may be delegated or assigned
by such magistrate court clerk.

Such magistrate court deputy clerk shall not be a member of
the immediate family of any magistrate, magistrate court
clerk, magistrate assistant or circuit court judge within the
same county, shall not have been convicted of a felony or any
misdemeanor involving moral turpitude and shall reside in the
county where appointed. For the purpose of this section, im-
mediate family shall mean the relationships of mother, father,
sister, brother, child or spouse.

Magistrate court deputy clerks shall be paid a monthly
salary by the state. Such salary shall be paid on the same basis and in the same applicable amounts as for magistrate assistants in each county as provided in section nine of this article.

§50-1-10. Clerks, deputy clerks and magistrate assistants to take oath and post bond.

Each magistrate court clerk, magistrate court deputy clerk, and magistrate assistant, shall take an oath of office and shall post a bond in the penalty of twenty-five thousand dollars with sufficient surety approved by the administrative director of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, which bond shall be conditioned upon the faithful performance of the duties of the office. The state shall pay the cost of such bond and the administrative director of the supreme court of appeals may obtain, in lieu of individual bonds, a bond including more than one magistrate court clerk, magistrate court deputy clerk or magistrate assistant.

§50-1-12. Conduct of office; penalty.

Magistrates shall be subject to and shall abide by the code of judicial ethics as adopted and amended by the supreme court of appeals. In addition to such conduct as may be regulated by the rules of the supreme court of appeals, no magistrate, magistrate court clerk or magistrate court deputy clerk or magistrate assistant shall:

(a) Acquire or hold any interest in any matter which is before the magistrate court;

(b) Purchase, either directly or indirectly, any property being sold upon execution issued by the magistrate court;

(c) Act as agent or attorney for any party in any proceeding in any magistrate court in the state; or

(d) Engage in, or assist in, any remunerative endeavor, except the duties of his office, while on the premises of the magistrate court office.

Any person who violates the provisions of this section shall
be guilty of official misconduct and shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not more
than five hundred dollars.

Nothing contained in this section shall preclude a magistrate,
magistrate court clerk, magistrate court deputy clerk, or
magistrate assistant from being a party to an action in the
magistrate court: Provided, That any action in which the
magistrate court clerk is a party shall not be assigned to the
chief magistrate nor shall any action in which a magistrate
court deputy clerk or magistrate assistant is a party be assigned
or heard by the magistrate for whom such magistrate assistant
is employed or to whose court such deputy clerk is assigned.

§50-1-14. Duties of sheriff; service of process; bailiff.

(a) It shall be the duty of each sheriff to execute all civil
and criminal process from any magistrate court which may be
directed to such sheriff. Process shall be served in the same
manner as provided by law for process from circuit courts.

Notwithstanding any provision contained therein to the con-
trary, the provisions of section thirty-one, article three, chapter
fifty-six of this code relating to service of process on non-
resident operators of motor vehicles shall apply to actions in
magistrate courts.

Subject to the supervision of the chief justice of the supreme
court of appeals or of the judge of the circuit court, or the
chief judge thereof if there is more than one judge of the
circuit court, it shall be the duty of the sheriff, or his designated
deputy, to serve as bailiff of a magistrate court upon the
request of the magistrate. Such service shall also be subject
to such administrative rules as may be promulgated by the
supreme court of appeals. A writ of mandamus shall lie
on behalf of a magistrate to enforce the provisions of this
section.

(b) The sheriff of any county may employ, by and with the
consent of the county commission, one or more persons whose
sole duties shall be the service of civil process and the service
of subpoenas and subpoenas duces tecum. Any such person
shall not be considered a deputy or deputy sheriff within the
meaning of subdivision (2), subsection (a), section two,
article fourteen, chapter seven of this code, nor shall any such
A person be authorized to carry deadly weapons in the performance of his duties.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts or justices of the peace, magistrate courts shall have jurisdiction of all civil actions wherein the value or amount in controversy or the value of property sought, exclusive of interest and cost, is not more than one thousand five hundred dollars. Magistrate courts shall have jurisdiction of matters involving unlawful entry or detainer of real estate so long as the title to such real estate is not in dispute. Except as the same may be in conflict with the provisions of this chapter, the provisions of article three, chapter fifty-five of this code, regarding unlawful entry and detainer, shall apply to such actions in magistrate court. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter. Magistrate courts shall have continuing jurisdiction to entertain motions in regard to post-judgment process issued from magistrate court and decisions thereon may be appealed in the same manner as judgments.

Magistrate courts shall not have jurisdiction of actions in equity, of matters in eminent domain, of matters in which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks, magistrate court deputy clerks, and magistrate assistants shall have the authority to administer any oath or affirmation, to take any affidavit or deposition, unless otherwise expressly provided by law, and to take, under such regulations as are prescribed by law, the acknowledgement of deeds and other writings.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

All costs collected in magistrate courts in a civil or
criminal proceeding shall be submitted on or before the
tenth day of the month following the month of their collec-
tion to the magistrate court clerk or, if there is no magistrate
court clerk, to the clerk of the circuit court along with such
information as may be required by the rules of the supreme
court and by the rules of the chief inspector of public offices.
Such clerk shall pay such costs into the special county fund
hereafter created during each fiscal year until there shall have
been paid a sum equal to twelve thousand five hundred dollars
multiplied by the number of magistrates authorized for such
county. All costs collected in excess of such sum during a fiscal
year shall be paid to the state. Notwithstanding the pro-
visions of section two, article nineteen, chapter fifty of this
code to the contrary, all costs and fees collected by justices
of the peace on or after the first day of July, one thousand
nine hundred seventy-six, shall be paid into said special
county fund hereafter created.

There is hereby created in each county a special county
fund designated as the magistrate court fund. No moneys
shall be appropriated from the fund except for the purposes
provided for in this section. Any money remaining in the
magistrate court fund on the thirtieth day of June, one
thousand nine hundred seventy-nine, and on the thirtieth day
of June of each year thereafter, shall be paid to the state.
A county may appropriate and spend from such fund such
sums as shall be necessary to defray the expenses of providing
bailiff and service of process services by the sheriff, to defray
the cost of acquiring or renting magistrate court offices and
providing utilities and telephones therefor and to defray the
expenses of such other services which by the terms of this
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.
§50-4-10. 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.

There shall be one form of civil action in magistrate court. Civil actions shall be commenced by the payment of the fees required by article three of this chapter and by providing any magistrate, magistrate court clerk, magistrate court deputy clerk, or magistrate assistant with a concise statement, either oral or written, of the nature of the cause of action. Such statement must be sufficient to notify the defendant of the subject matter of the action. Where such statement is filed by a commercial creditor, the statement shall include, but not be limited to, a setting forth of the amount of the original obligation, the portion thereof which constitutes principal, the portion thereof which represents interest, the date and amount of payments thereon, the amount, if any, credited as a rebate for prepayment, the amount, if any, credited for the sale of repossessed collateral, and the amount alleged to be due. The magistrate court clerk, the magistrate court deputy clerk, or magistrate assistant shall immediately prepare a summons in such form and containing such information as may be required by the rules of the supreme court of appeals. The summons shall be dated the same day the request therefor is received and the appropriate fees received, and the action shall be deemed commenced as of that date. The magistrate assistant shall thereupon forward the matter to the magistrate court clerk together with any service of process fees which may have been collected.

Upon receipt of the matter by the magistrate court clerk, such clerk shall docket the same in a central docket. Such clerk shall thereupon assign the action for trial in the manner as shall be prescribed by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, to promote and secure the convenient and expeditious transaction of the business of the court. After the matter is assigned, the magistrate court clerk shall make note of the assignment on the summons, sign the summons and forward it, together with any service of process fees which 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.

Except in matters involving unlawful entry and detainer, each summons in a civil action shall notify the defendant that he must appear within twenty days after service of the summons upon him or that he must otherwise notify the magistrate court by that time that he wishes to contest the matter. In matters involving unlawful entry and detainer such appearance or notification shall be required within five days after service of the summons.

If the magistrate court is notified by the defendant that he wishes to contest the matter a trial date shall be set and all parties notified thereof. Such trial date shall be at least five days from notification thereof unless all parties consent otherwise thereto.

If no appearance or other notification is made within twenty days after the service of the summons on the defendant, or, in matters involving unlawful entry and detainer within five days after service of summons, judgment by default may be entered in accordance with the provisions of section ten of this article.

§50-4-7. Removal to another magistrate.

Any party to a civil or criminal proceeding before a magistrate in any county wherein there is more than one magistrate may file an affidavit that the magistrate before whom the matter is pending has a personal bias or prejudice either against him or in favor of any opposite party or that such magistrate has counseled with any opposite party with respect to the merits of the proceeding. The affidavit shall state the facts and reasons for belief in the truth thereof. Such affidavit must be filed at least two days before the trial or hearing date unless the grounds for such affidavit are not discovered until after such time. The supreme court of appeals shall provide a form affidavit which shall be made available to all parties and which shall comply with the requirements of this section.

Upon the timely filing of such affidavit, the magistrate shall transfer all matters relating to the case to the magistrate
court clerk, who shall thereupon assign and transfer the matter
to be heard by some other magistrate within the county
upon an assignment basis to be established by the judge of the
circuit court, or to transfer all matters relating to the case
to the magistrate court clerk, who shall thereupon assign and
transfer the matter to be heard by some other magistrate
within the county upon a rotation basis to be established by
the judge of the circuit court, or the chief judge thereof
if there is more than one judge of the circuit court. Such re-
moval and assignment shall be permitted, however, only if
there is some other magistrate in the county before whom
the matter had not been previously pending. No party shall be
entitled to cause such a removal more than once.

The magistrate to whom the matter is assigned shall set
a new return date not more than five days from his receipt
of the matter, shall notify all parties thereof, and shall
proceed with the matter as if it had been originally assigned
to him.

§50-4-8. Removal to circuit court.

At any time before trial in a civil action involving less than
three hundred dollars the action may be removed to circuit
court upon the concurrence of all parties and upon the pay-
ment of the circuit court filing fee. At any time before trial
in a civil action involving three hundred dollars or more, any
party may, upon payment of the circuit court filing fee, cause
such action to be removed to the circuit court. All appropriate
documents shall then be forwarded along with such fee to the
clerk of the circuit court. The matter shall then be heard
by the circuit court.


A defendant in a civil action may at any time within twenty
days after the service of process on him commence a separate
action as a counterclaim and if such counterclaim arises from
the same transaction or occurrence that is the subject matter
of the initial claim they shall be tried together. The require-
ments of law relating to the payment of fees and service of
process shall apply to counterclaims. The failure to institute
a counterclaim permitted by this section shall not preclude the
institution of an action on such claim at a later date. The adjudication of the original claim shall not constitute res judicata as to any such permitted counterclaim nor shall it act as an estoppel as to such permitted counterclaim.

§50-4-10. Judgment before trial.

If a defendant in a civil action fails to appear or otherwise notify the magistrate court within twenty days after the service of the summons upon him, or within five days in matters involving unlawful entry and detainer, that he wishes to contest the action, the magistrate may enter judgment as justice may require as follows:

(a) The magistrate shall enter judgment by default only upon affidavit or sworn testimony reflecting the nature of the claim, whether or not it is for a sum certain or for a sum which can by computation be made certain, the defendant's failure to appear or otherwise notify the court within twenty days after service of the summons upon him that he wishes to contest the action and supporting the relief sought. In the event the plaintiff's claim is not for a sum certain or for a sum which can by computation be made certain, the court shall require such further proof by affidavit or sworn testimony as is necessary to determine the priority of the relief sought.

(b) No judgment by default shall be rendered against a person who is an infant, incompetent person or incarcerated convict unless such person is represented in the action by a guardian ad litem, guardian, committee, curator or other like fiduciary.

Upon motion made by the defendant within twenty days after the entry of such judgment, the magistrate may, for good cause shown, set aside the judgment and set the matter for trial.

If a defendant offers to confess judgment at any time, the magistrate shall take the same in writing and enter judgment for the amount confessed plus costs. In the event the amount claimed by the plaintiff exceeds the amount confessed by the defendant the plaintiff may request that the
matter be set for trial. If the plaintiff's recovery therein does not exceed the amount confessed, costs shall be assessed against the plaintiff.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

A magistrate may render judgment against the plaintiff dismissing his action with prejudice to a new action and awarding costs to the defendant when (a) the plaintiff fails to appear and prosecute his action at the proper time for appearance; (b) the plaintiff fails or refuses to testify when properly required to do so; or (c) the plaintiff fails to give security for costs when properly required to do so. In cases (a) and (b) if the plaintiff shows cause why his action should not have been dismissed, the magistrate may set aside such judgment and continue the matter before him or may dismiss the action without prejudice.

A magistrate shall dismiss a claim without prejudice if the summons is defective or erroneous and cannot properly be amended.

A magistrate shall dismiss a claim without prejudice if the plaintiff requests such dismissal before trial.

The dismissal of a claim shall not affect the right of any party to proceed to trial upon a counterclaim.

§50-4-13. Intercounty institution of civil actions.

A civil action may be instituted before a magistrate court clerk, magistrate court deputy clerk, or magistrate assistant in any county when the matter should be heard in another county. The clerk, deputy clerk, or magistrate assistant before whom such matter is instituted shall, in such event, forward all fees collected together with an appropriate statement of the matter to the magistrate court of the appropriate county. The clerk, deputy clerk, or magistrate assistant receiving such information and fees shall proceed with the matter as if it were actually instituted before him.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.


§50-5-3. Appointment of guardian ad litem.
§50-5-5. Privileged communications; persons incompetent to testify.
§50-5-8. Trial by jury.
§50-5-12. Appeals in civil cases.
§50-5-14. Pleas in certain cases.


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.

1 A magistrate, magistrate court clerk, magistrate court deputy clerk or magistrate assistant shall, upon the request of any party, issue a subpoena compelling the attendance and testimony of a witness or a subpoena duces tecum compelling the production of some writing or other object. The court shall require the sheriff to enforce such subpoena or subpoena duces tecum and may punish the willful disregard thereof by finding such person in contempt in accordance with the provisions of section eleven of this article. Witness fees and mileage shall 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 in magistrate court as to any communication privileged by law. No person shall be compelled to testify as to any matter as to which he is incompetent by law to testify.


1 In a civil action the evidentiary deposition of any witness residing out of the county or unable to attend court may be taken for use at the trial by any party upon reasonable notice to all other parties.

§50-5-8. Trial by jury.

1 Any party to a civil action is entitled to a trial by jury when the amount in controversy exceeds twenty dollars or involves possession to real estate. Any defendant in any criminal action shall be entitled to a trial by jury, and any such verdict must be unanimous. A defendant in a criminal proceeding may waive a jury trial if he is advised of his right to a jury trial and such waiver is made in writing. A magistrate court jury shall consist of six persons, to be selected from a panel of ten persons. The selection and summoning of jurors shall be conducted in accordance with rules and regulations to be promulgated by the supreme court of appeals no later than the first day of July, one thousand nine hundred seventy-eight. Jurors shall be paid by the state in accordance with such rules.

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.


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.

A magistrate may, if necessary, issue a warrant of arrest 
for such person, who shall be given an opportunity to be 
heard. In the event such person is adjudged guilty of 
contempt, the person may be fined not more than fifty dollars 
for the first offense. For a second offense pertaining to the 
same matter the person may be fined not more than one 
hundred dollars. For the third or any subsequent offense 
pertaining to the same matter the person may be fined not
§50-5-12. Appeals in civil cases.

Any person may appeal the judgment of a magistrate court to the circuit court as a matter of right by requesting such appeal not later than twenty days after such judgment is rendered or not later than twenty days after a decision is rendered upon a motion to set aside such judgment. Such person shall be required to post a bond with good security in a reasonable amount not less than the reasonable court costs of the appeal nor more than the sum of the judgment and the reasonable court costs of the appeal, upon the condition that such person will satisfy the judgment and any court costs which may be rendered against him on any such appeal. The circuit court filing fee shall be collected by the magistrate court clerk or deputy clerk at the time the appeal is requested, which said fee shall be forwarded to the clerk of the circuit court along with other appropriate documents regarding the appeal. No bond shall be required of any governmental agency or authority or of a person who has filed an affidavit pursuant to section one, article two, chapter fifty-nine of this code. If no appeal is perfected within such twenty-day period, the circuit court of the county may, not later than ninety days after the date of judgment, grant an appeal upon a showing of good cause why such appeal was not perfected within such twenty-day period. The filing or granting of an appeal shall automatically stay further proceedings to enforce the judgment. Trial in circuit court shall be de novo. If, after the appeal is regularly placed upon the docket of the circuit court, neither party brings the matter on to hearing before the end of the second term thereafter at which it is called for trial, unless good cause for a continuance is shown, the appeal shall be considered as abandoned and shall be dismissed at the cost of the appellant unless sufficient cause is shown for a further continuance and the judgment of the magistrate court shall stand. No appeal which shall have been
§50-5-14. Pleas in certain cases.

Except for violations of section one or two, article five, chapter seventeen-c of this code, and except for violations of any of the provisions of chapter twenty of this code which may subject the person charged therewith to confinement, any person charged with a violation of said chapter seventeen-c or said chapter twenty may plead guilty or nolo contendere thereto by appearing before a magistrate, magistrate court clerk, magistrate court deputy clerk or magistrate assistant in a county other than the county in which he is charged and pay an appropriate fine and costs as advised by such magistrate clerk or deputy clerk. The clerk, deputy clerk or magistrate assistant shall immediately forward the same to the appropriate magistrate court. The magistrate court may either accept or reject the same. In the event the same is rejected the plea shall be considered withdrawn and all moneys paid shall be returned and the matter shall proceed as if no such offer of plea had been made.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

The provisions of articles three, four, five, five-a, five-b and six, chapter thirty-eight of this code, except as the same are in conflict with the provisions of this chapter or are clearly applicable only to courts of record, shall apply to the enforcement of judgments rendered in magistrate court and process therefor shall issue from magistrate court. Process issued in violation of such provisions shall be void. The form of such process shall be in accord with the rules of the supreme court of appeals. No such process shall issue until after ten days after the judgment is rendered, or, if a motion to set aside such judgment is then pending, until after ten days 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 January, May and September.

3 For the county of Hardy, on the first Tuesday in February, June and October.

5 For the county of Pendleton, on the first Tuesday in 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 January, the third Monday in April and the third Monday in September.

4 For the county of Lincoln, on the third Monday in 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 of all proceedings before magistrates, by mandamus, prohibition and certiorari. They shall, except in cases confined exclusively by the constitution to some other
tribunal, have original and general jurisdiction of all
matters at law where the amount in controversy, ex-
clusive of interest, exceeds three hundred dollars; of all
cases of habeas corpus, mandamus, quo warranto and
prohibition; of all cases in equity, including jurisdiction
in equity to remove any cloud on the title to real
property, or any part thereof, or any estate, right or
interest therein, and to determine questions of title
with respect thereto, without requiring allegations or
proof of actual possession of the same; and of all crimes
and misdemeanors. They shall have appellate jurisdic-
tion in all cases, civil and criminal, where an appeal,
writ of error or supersedeas may be allowed to the judg-
ment or proceedings of any inferior tribunal. They shall
also have such other jurisdiction, whether supervisory,
original, appellate or concurrent, as is or may be pre-
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

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 contrary, terms of circuit court may be held in two or more counties in the same circuit at the same time and a term of court in one county of a circuit need not be adjourned sine die or otherwise terminated as a condition of or prior to the commencement of a term of court in another county of the same circuit.

ARTICLE 3. COURTS IN GENERAL.

§51-3-10. Opening after day fixed.


§51-3-10. Opening after day fixed.

1. Though court be not held on the first day of a term, it may nevertheless be opened on any subsequent day; provided, in the case of any court of record for any county, the same be done before four o'clock in the afternoon of the third day. If, after a court is opened, it fails to sit on any day, it may nevertheless sit on any subsequent day of the term: Provided, That in the case of any court of record for any county, there be not more than thirty consecutive days of such failure.


1. The limitations upon the powers of circuit court judges to act in or during the vacation of the court as heretofore existed, either at common law or as may exist elsewhere in this code, to the contrary notwithstanding, a judge of a circuit court may do any act or take any proceeding in
any action or proceeding, whether civil, criminal or otherwise, which is instituted or pending before the court during the vacation of such court to the same extent as 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.

The Legislature hereby designates the governor's committee on crime, delinquency and correction (established by Executive Order No. 7-A-66 and designated a state planning agency by Executive Order No. 14-68) as the state planning agency required for participation by the state of West Virginia in programs provided for by the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 United States code, sections 3701 through 3796c, inclusive) and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 United States code, section 5601).
CHAPTER 31
(Com. Sub. for H. B. 1155—By Mr. Wooton)

[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 any person, or by any means cause him bodily injury with intent to maim, disfigure, disable or kill, he shall, except where it is otherwise provided, be guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than two nor more than ten years. If such act be done unlawfully, but not maliciously, with the intent aforesaid, the offender shall be guilty of a felony, and, upon conviction, shall, in the discretion of the court, either be confined in the penitentiary not less than one nor more than five years, or be confined in jail not exceeding twelve months and fined not exceeding five hundred dollars.

(b) Assault—If any person unlawfully attempts to commit a violent injury to the person of another or unlawfully commits an act which places another in reasonable apprehension of immediately receiving a violent injury, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail for not more than six months, or fined not more...
than one hundred dollars, or both such fine and imprisonment.

(c) Battery—If any person unlawfully and intentionally makes physical contact of an insulting or provoking nature with the person of another or unlawfully and intentionally causes physical harm to another person, he shall be guilty of a misdemeanor, and, upon conviction, shall be confined in jail for not more than twelve months, or fined not more than five hundred 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
(2) "Conveyance" means any motor vehicle, vessel, railroad car, railroad engine, trailer, aircraft or sleeping car, and "to enter a conveyance" includes taking apart any portion of the conveyance.

(3) An act is committed "in the course of committing" if it occurs in an attempt to commit the offense or in flight after the attempt or commission.

(4) "Posted land" is that land upon which reasonably maintained signs are placed not more than five hundred feet apart along and at each corner of the boundaries of the land, upon which signs there appears prominently in letters of not less than two inches in height the words "No trespassing" and in addition thereto the name of the owner, lessee or occupant of the land. The signs shall be placed along the boundary line of posted land in a manner and in a position as to be clearly noticeable from outside of the boundary line. It shall not be necessary to give notice by posting on any enclosed land or place not exceeding five acres in area on which there is a dwelling house or property that by its nature and use is obviously private in order to obtain the benefits of this article pertaining to trespass on enclosed lands.

(5) "Cultivated land" is that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture or trees or is fallow land as part of a crop rotation.

(6) "Fenced land" is that land which has been enclosed by a fence of substantial construction, whether with rails, logs, post and railing, iron, steel, barbed wire, other wire or other material, which stands at least three feet in height. For the purpose of this article, it shall not be necessary to fence any boundary or part of a boundary of any land which is formed by water and is posted with signs pursuant to the provisions of this article.

(7) Where lands are posted, cultivated or fenced as
described herein, then such lands, for the purpose of this article, shall be considered as enclosed and posted.

(8) "Trespass" under this article is the willful unauthorized entry upon, in or under the property of another, but shall not include the following:

(a) Entry by the state, its political subdivisions or by the officers, agencies or instrumentalities thereof as authorized and provided by law.

(b) The exercise of rights in, under or upon property by virtue of rights-of-way or easements by a public utility or other person owning such right-of-way or easement whether by written or prescriptive right.

(c) Permissive entry, whether written or oral, and entry from a public road by the established private ways to reach a residence for the purpose of seeking permission shall not be trespass unless signs are posted prohibiting such entry.

(d) Entry performed in the exercise of a property right under ownership of an interest in, under or upon such property.

(e) Entry where no physical damage is done to property in the performance of surveying to ascertain property boundaries, and in the performance of necessary work of construction, maintenance and repair of a common property line fence, or buildings or appurtenances which are immediately adjacent to the property line and maintenance of which necessitates entry upon the adjoining owner’s property.

§61-3B-2. Trespass in structure or conveyance.

Any person who knowingly enters in, upon or under a structure or conveyance without being authorized, licensed or invited, or having been authorized, licensed or invited is requested to depart by the owner, tenant or the agent of such owner or tenant, and refuses to do so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.
8 If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the unlawful and felonious intent to do bodily injury to a human being in said structure or conveyance at the time the offender knowingly trespasses, such offender shall, notwithstanding the provisions of section one, article seven, chapter sixty-one of this code, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be confined in the county jail for a period not to exceed twelve months, or both such fine and imprisonment.

§61-3B-3. Trespass on property other than structure or conveyance.

(a) Any person who knowingly and without being authorized, licensed or invited, enters or remains on any property, other than a structure or conveyance, as to which notice against entering or remaining is either given by actual communication to such person or by posting, fencing or cultivation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.

(b) If the offender defies an order to leave, personally communicated to him by the owner, tenant or agent of such owner or tenant, or if the offender opens any door, fence or gate, and thereby exposes animals, crops or other property to waste, destruction or freedom, or causes any damage to property by such trespassing on property other than a structure or conveyance, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for a period not to exceed six months, or both such fine and imprisonment.

(c) If the offender is armed with a firearm or other dangerous weapon with the unlawful and felonious intent to do bodily injury to a human being during his commission of the offense of trespass on property other than a structure or conveyance, such offender shall, notwith-
standing the provisions of section one, article seven, chapter sixty-one of this code, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a term not to exceed six months, or fined not more than one hundred dollars, or both such fine and imprisonment.

(d) Notwithstanding and in addition to any other penalties provided by law, any person who performs or causes damage to property in the course of a willful trespass shall be liable to the property owner in the amount of twice the amount of such damage: Provided, That the 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 of this article and the body of the deceased transported to
Daylight Saving Time

Ch. 34) DAYLIGHT SAVING TIME 203

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

(5. 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
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.

Every license for marriage shall be issued by the clerk of the county commission of the county in which either party usually resides, except that where both parties are nonresidents of the state of West Virginia, the license shall be issued by the clerk of the county commission of the county in which application is made. Such license shall be issued not sooner than three days after the filing with said clerk of a written application therefor. The day upon which such application is filed 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
copy thereof, shall be legal evidence of the facts therein contained.

To the extent otherwise provided by section six-c of this article, the provisions of this section shall not apply. No application for license shall be received nor any license issued on any Sunday, or before the hours of eight o'clock a.m. and after five o'clock p.m. on any week day; nor any application be received nor any license issued except in the 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.


1 An initiating court shall not require payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor.
2 A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including
fees for filing of pleadings, service of process, seizure of
property, stenographic or duplication service or other service
supplied to the obligor, be paid in whole or in part by the
obligor. When a court in this state is the responding court
and has ordered that the obligor make payments to the
clerk of such court for transmission to the court in an
initiating state, the clerk shall collect from the obligor, in
addition to all other fees and costs, a fee equal to one
percent of the payment ordered to be paid by the obligor,
which fee shall be treated in the manner of all other fees
received by the clerk. Costs or fees do not have priority
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.

All children entering school for the first time in this state
shall be given a screening test to determine if they might
have a vision or hearing impairment. County boards of
education shall conduct all such screening tests through the
use of trained personnel. Parents or guardians of children who
are found to have a vision or hearing impairment shall be
notified of the results of such tests and advised that further
diagnosis and treatment of such impairment by qualified pro-
fessional personnel is recommended.

The state board of education is hereby authorized to pro-
mulgate further rules and regulations consistent with this
section. The state superintendent is directed to apply for
federal funds, if available, for the implementation of the re-
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
members: (a) The governor, who shall be ex officio chairman; (b) the state superintendent of free schools; (c) the commissioner of finance and administration; (d) the state insurance commissioner; (e) the state treasurer; (f) four members of the retirement system; and (g) a retired school employee to be elected by retired school employees receiving benefits from the retirement system. The elected retired school employee shall be a resident of this state who shall have been receiving benefits from the retirement system at least one year prior to his election to the board.

All elections shall be held prior to the first day of July. The retired school employee member shall be elected for a two-year term; the first term shall begin on the first day of July, one thousand nine hundred seventy-eight. All elections except those of the retired school employees, shall be for six-year terms; and all elective terms shall begin on the first day of July. The manner and mode of such elections shall be determined by the retirement board.

Vacancies occurring in the terms of the elected membership of the retirement board shall be filled within sixty days for unexpired periods by the retirement board. If the retirement board does not fill such vacancy within sixty days, the chairman shall appoint a member of the retirement system to serve for the remainder of the unexpired term.

Before exercising any authority or performing any duties as a member of the retirement board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article four of the constitution, the certificates whereof shall be filed with the secretary of state.

§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration during which a member was absent without
pay, nor shall it credit for more than one year of service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal selective service act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service credit so granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member's total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the retirement board shall grant credit for such transferred service as additional service only: Provided, however, That a transfer of out-of-state service shall be prohibited if such service is used to obtain a retirement benefit from another retirement system: Provided further, That salaries paid to members for service prior to entrance into the retirement
system shall not be used to compute the average final salary of
such member under the retirement system.

No member shall be deemed absent from service as a
teacher while serving as a member of the Legislature of the
state of West Virginia during any duly constituted session
of that body.

No member shall be deemed absent from service as a
teacher while serving on leave of absence as an officer with
a statewide professional teaching association, or who has
served in such capacity, and no retired teacher, who served
on such leave of absence while a member, shall be deemed
to have been absent from service as a teacher by reason of
such service on leave of absence: Provided, That the period
of service credit granted for such service on leave of absence
shall not exceed two years: Provided, however, That such
member or retired teacher who is serving or has served as
an officer of a statewide professional teaching association
shall make deposits to the teachers retirement board, for the
time of any such absence, in an amount double the amount
which he would have contributed in his regular assignment
for a like period of time.

The teachers retirement board shall grant service credit
to any former or present member of the West Virginia
public employees retirement system who has been a con-
tributing member for more than three years, for service
previously credited by the public employees retirement system,
and (1) shall require the transfer of the member's contribu-
tions to the teachers retirement system or (2) shall require a
repayment of the amount withdrawn any time prior to the
member's retirement: Provided, That there shall be added by
the member to the amounts transferred or repaid under this
paragraph an amount which shall be sufficient to equal the
contributions he would have made had the member been
under the teachers retirement system during the period of
his membership in the public employees retirement system.
Payments for absence as provided in section thirteen of this
article, shall be paid in addition to the above amount, if
applicable.
If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.

Subject to the above provisions, the board shall verify as soon as practicable, the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article. Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.

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 boards of education throughout the state shall establish and maintain for all exceptional children between five and twenty-three years of age special educational programs, including but not limited to special schools, classes, regular classroom programs, home-teaching or visiting-teacher services for such type or classification as the state board of education shall approve. Provisions shall be made for educating such exceptional children (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to educate them in accordance with their capacities, limitations and needs. In addition, county boards of education may establish and maintain other educational services for exceptional children as the state superintendent of schools may approve.

24 By the school year beginning on the first day of July, one thousand nine hundred seventy-four, county boards of education shall establish and maintain these special educational programs, including but not limited to special schools, classes, regular class programs, home-teaching and visiting-teacher services. The state board of education shall adopt rules and regulations to advance and accomplish this program and to assure that all excep-
tional children in the state, including children in mental health facilities, residential institutions and private schools, will receive an education in accordance with the mandates of state and federal laws.

Nothing in this section shall be construed to prevent county boards of education from providing special educational programs, including but not limited to special schools, classes, regular class programs, home-teaching or visiting-teacher services for such exceptional children who are three years of age or older.

§18-20-4. Examination and report by medical or other specialists.

1 Each child prior to enrolling in a special education program shall be examined by an appropriate medical specialist, psychologist or educational specialist (reading specialist, speech and language clinician, or other specialists as required by the state board of education for specific areas of exceptionality) who shall report to the county superintendent of schools. The specialists' report shall carry recommendation for eligibility and placement in regular school or in the special education facility, indicate the nature and extent of disability, and advise with reference to treatment and prosthesis for alleviating the child's disability.

13 No educationally exceptional child shall be excluded 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 to organize, promote and administer this program under his present organization and be responsible for:

4 (1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

8 (2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, edu-
cating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) Preparing the necessary rules, regulations, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children, ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the state board of education.

(4) Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions and private schools, receive an education in accordance with state and federal laws.

(6) Performing such other duties and assuming such other responsibilities in connection with this program as may be needed.

(7) Nothing herein contained shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

§18-20-6. Advisory council for the education of exceptional children.

There shall be an advisory council for the education of exceptional children which shall advise and consult with the state board of education on matters pertinent thereto. The advisory council shall be composed of twelve members appointed by the state superintendent of free schools, four of which shall be parents of exceptional children utilizing or eligible for the services of the special educational programs established hereunder. Other
9 members of the advisory council shall include at least one handicapped individual, teacher of exceptional children, state education official, local education official, and an administrator of programs for exceptional children. No more than two officers and employees of the state may be eligible for appointment to the advisory council. Members shall be appointed for terms of three years except for initial terms which may be for one, two or three years. Each year the terms of office of one third of the advisory council shall expire. The members of the advisory council shall be citizens and residents of this state, who by reason of their training, education or experience are qualified to carry out the functions of the advisory council under this article.

23 The first term of office for the newly appointed members shall begin the thirtieth day of June, one thousand nine hundred seventy-eight.

26 At its first meeting, to be held the second Wednesday in July, one thousand nine hundred seventy-eight, the advisory council shall elect a chairman from among its members, who shall preside over its meetings until the second Wednesday in July of the next year. Thereafter, the advisory council shall elect a chairman on the second Wednesday in May of each year.

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

40 For the purpose of carrying out its functions under this article, six members of the advisory council shall constitute a quorum. The advisory council shall meet at least four times each year at least two of which shall be held at a building in the state capitol complex and at a time designated by the chairman. Additional meetings may be held when called by the chairman or when requested by six members of the advisory council.
The time and place of all meetings and agenda items must be publicly announced and available to the public upon request at least ten days prior to the meeting, and meetings must be open to the public. Official minutes must be kept of all council meetings and shall be made available to the public upon request.

Members of the council shall not receive any compensation for their services on the council, but shall be reimbursed any actual expenses incurred by them in carrying out their duties from funds appropriated to the department of education.

The council shall:

(a) Consult with the state board of education concerning and comment publicly upon any rules and regulations formulated by such board regarding the education of handicapped children;

(b) Consult with and advise the state board and superintendent and the Legislature concerning any problems presented to the council including unmet needs within the state in the education of handicapped children;

(c) Hold public meetings at such times and places as the advisory council deems appropriate;

(d) Periodically review and comment publicly upon the state plan for special programs and make any recommendations it may have concerning changes it may deem proper. By the first day of July of each year, the advisory council shall submit an annual report of its activities and suggestions to the state board of education and the superintendent, and shall make such report available to the public.

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 appointed by him as soon after the effective date of this article as is practicable, and the original terms of the nine members appointed by the governor and of the one member, who is such by virtue of being the state superintendent of schools, shall commence on July one, one thousand nine hundred sixty-nine. The chairman of the advisory council of students, ex officio, and the chairman of the advisory council of faculty, ex officio, shall serve the terms for which they were elected by their respective advisory councils; these members shall be eligible to succeed themselves. All members of the board of regents serving as of the effective date of this enact-
ment shall continue to serve until the end of their term as
provided for above.

The governor shall appoint a member to fill any vacancy
among the nine members of the board appointed by the
governor, by and with the advice and consent of the Senate,
which member appointed to fill such vacancy shall serve for
the unexpired term of the vacating member. The governor
shall fill the vacancy within sixty days of the occurrence of
the vacancy.

All members of the board appointed by the governor shall
be eligible for reappointment. A person who has served as a
member during all or any part of the two consecutive terms
shall be ineligible to serve as a member for a period of three
years immediately following the second of the two consecu-
tive terms.

Before exercising any authority or performing any duties
as a member of the board, each member shall qualify as such
by taking and subscribing to the oath of office prescribed by
section 5, article IV of the state Constitution, the certificate
whereof shall be filed with the secretary of state.

No member of the board appointed by the governor may be
removed from office by the governor except for official
misconduct, incompetence, neglect of duty, or gross im-
morality and then only in the manner prescribed by law for the
removal by the governor of the state elective officers.

§18-26-9a. Advisory council of faculty.

During the month of April, one thousand nine hundred
seventy-seven, and annually thereafter, each state college,
community college, including Potomac State College of West
Virginia University, and university president or other adminis-
trative head shall convene a meeting of all faculty members
of his institution. At these meetings, the faculty members of
each such college and university shall elect one faculty member
to serve on the advisory council of faculty, which is hereby
created, consisting of one faculty member, so elected, from
each such college and university. Terms of the members of
such council shall be for one year and shall begin on the
first day of May of each year.
13 The advisory council of faculty shall meet at least once each quarter, and shall meet during each month of June, at which meeting the council shall elect a chairman, who shall be by virtue of his office a voting member of the West Virginia board of regents. No member may vote by proxy at such election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, the council shall elect, in the manner prescribed by this section for the election of a chairman, a member of the council to preside over meetings of the council in the chairman’s absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following such vacancy.

The advisory council of faculty, through its chairman and in any other appropriate manner, shall consult and advise the board of regents in matters of higher education in which the faculty members of this state’s colleges and universities may have an interest.

Members of the advisory council shall be eligible to succeed themselves. Members of the advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of their office to be paid by the state college or university served.

The board of regents shall furnish a secretarial service to the advisory council, and the advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any faculty member of the state’s colleges and universities.

§18-26-9b. Advisory council of students.

1 The student government organization at each state college, community college, including Potomac State College of West Virginia University, and university shall elect a student, who shall be a resident of the state of West Virginia and who may be the elected head, or president, of such organization, to serve on the advisory council
of students which is hereby created, consisting of the
elected representatives of each such college or university.
Terms of the members of such council shall be for one
year and shall begin on the first day of May of each
year.

The advisory council of students shall meet at least once
each quarter, and shall meet during each month of June, at
which meeting, the council shall elect a chairman, who shall
be a resident of the state of West Virginia and who shall be,
by virtue of his office, a voting member of the West Virginia
board of regents. No member may vote by proxy at such
election. In the event of a tie in the last vote taken for
such election, a member authorized by the council shall
select the chairman by lot from the names of those persons
tied. Immediately following the election of a chairman, the
council shall elect, in the manner prescribed by this section
for the election of a chairman, a member of the council to
preside over meetings of the council in the chairman’s absence.
Should the chairman vacate the position, the council shall
meet and elect a new chairman to fill the unexpired term
within thirty days following such vacancy.

The advisory council of students, through its chairman and
in any other appropriate manner, shall consult and advise
the board of regents in matters of higher education in which
the students of the state’s colleges and universities may have
an interest.

Members of the advisory council shall be eligible to succeed
themselves. Members of the advisory council shall serve
without compensation, but shall be entitled to reimbursement
for actual and necessary expenses incurred in the performance
of the duties of their office to be paid by the state college or
university served.

The board of regents shall furnish a secretarial service to
the advisory council, and the advisory council shall cause to
be prepared minutes of its meetings, which minutes shall be
available, upon request, to any student in this state’s colleges
and universities.
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 pursuant to section two of this article, on and after the first day of July, one thousand nine hundred seventy-eight, each teacher shall receive as a supplement thereto the specific additional amount prescribed in this section for such teacher's years of experience and educational level as hereinafter set forth. This salary supplement and the increased fixed charges payments hereby required shall be paid outside the West Virginia public school support plan provided for in article nine-a, chapter eighteen of the code: Provided, That commencing with the one thousand nine hundred seventy-eight—one thousand nine hundred seventy-nine school year and, notwithstanding any other provisions of the law to the contrary, no county board shall schedule more than four paid non-instructional days, except holidays, prior to January one of each year and, when as a consequence of emergency conditions, a county board has canceled scheduled instructional days, such board shall reschedule the canceled instructional
days upon those paid noninstructional days, except holidays, which are available prior to the second day before the end of the employment term established by such county board: *Provided, however,* That the employment term shall in no case exceed a total of two hundred paid days, and the instructional term shall be scheduled within said employment term of two hundred paid days.

### STATE SUPPLEMENTAL SALARY SCHEDULE

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</table>
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.

The purpose of this section is to establish an employment term and class titles for auxiliary and service personnel. The employment term for auxiliary and service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of such personnel for a longer term. The beginning and closing dates of the ten-month term shall not exceed forty-three weeks. Auxiliary and service personnel employed on a yearly or twelve-month
basis may be employed by calendar months. Whenever there
is a change in job assignment during the school year, the
minimum pay scale and any county supplement shall be
applicable.

Auxiliary and service personnel employed in the same
classification for more than the two hundred day minimum
employment term shall be paid for such additional employment
at a daily rate of no less than the daily rate paid for the
two hundred day minimum employment term.

Upon the change in classification or upon meeting the
requirements of an advanced classification of or by any em-
ployee, his salary shall be made to comply with the require-
ments of this article, and to any county salary schedule in
excess of the minimum requirements of this article,
based upon his advanced classification and allowable years of
employment.

An employee's contract as provided in sections four and
five, article two of this chapter shall state the appropriate
monthly salary the employee is to be paid based on the
class title as provided in this article and any county salary
schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class
titles, set forth in section eight-a of this article, are defined
as follows:

"Pay grade" means the monthly salary applicable to class
titles of auxiliary and service personnel.

"Years of employment" means the number of years which
an employee classified as auxiliary or service personnel has
been employed by a board of education in any position prior
to or subsequent to the effective date of this section and
including service in the armed forces of the United States
if the employee were employed at the time of his induction.
For the purpose of section eight-a of this article, years of
employment shall be limited to the number of years shown and
allowed under the state minimum pay scale as set forth in
section eight-a of this article.
“Class title” means the name of the position or job held by auxiliary and service personnel.

“Accountant I” means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

“Accountant II” means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

“Accountant III” means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

“Aide I” means auxiliary personnel as defined in section one, article one of this chapter.

“Aide II” means auxiliary personnel as defined in section one, article one of this chapter, who have completed a training program approved by the state board of education, or who hold a high school diploma or who have received a general educational development certificate.

“Aide III” means auxiliary personnel who hold a high school diploma or a general educational development certificate, and who have completed six semester hours of college credit at a higher educational institution.

“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

“Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

“Cabinet maker” means personnel employed to construct cabinets, tables, bookcases and other furniture.
“Cafeteria manager” means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

“Carpenter I” means personnel classified as a carpenter’s helper.

“Carpenter II” means personnel classified as a journeyman carpenter.

“Chief mechanic” means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

“Clerk I” means personnel employed to perform clerical tasks.

“Clerk II” means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

“Computer operator” means qualified personnel employed to operate computers.

“Cook I” means personnel employed as a cook’s helper.

“Cook II” means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a “Cook I” for a period of four years, if such personnel have not been elevated to this classification within that period of time.

“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

“Crew leader” means personnel employed to organize the
work for a crew of maintenance employees to carry out assigned projects.

“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.

“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.
“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators as in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

“Foremen” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

“Graphic artist” means personnel employed to prepare graphic illustrations.

“Groundsmen” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.

“Heating and air conditioning mechanic I” means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“Heating and air conditioning mechanic II” means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.
“Heavy equipment operator” means personnel employed to operate heavy equipment.

“Inventory supervisor” means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

“Key punch operator” means qualified personnel employed to operate key punch machines or verifying machines.

“Locksmith” means personnel employed to repair and maintain locks and safes.

“Lubrication man” means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

“Machinist” means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

“Maintenance clerk” means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

“Mason” means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

“Mechanic” means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

“Mechanic assistant” means personnel employed as a mechanic apprentice and helper.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and
equipment. Such personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

“Secretary I” means personnel employed to transcribe from notes or mechanic equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed as school, office or program secretaries to perform general clerical tasks, transcribe, prepare reports, receive callers and refer them to proper persons, operate office machines, keep records and handle routine correspondence.
“Secretary III" means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control.

“Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. His responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures, mechanical and electrical equipment of a board of education.

“Supervisor of transportation” means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

“Switchboard operator-receptionist” means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

“Truck driver” means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

“Warehouse clerk” means personnel employed to be responsible for receiving, storing, packing and shipping goods.

“Watchman” means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

“Welder” means personnel employed to provide acetylene or electric welding services for a school system.
In addition to the compensation provided for in section eight-a of this article, for auxiliary and service personnel, each auxiliary and service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all auxiliary and service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Auxiliary and service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, shall not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, such county schedules to be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Uniformity shall apply to any additional salary increments or compensation for all persons performing like assignments and duties within the county. In establishing such local salary schedules no county, from the effective date of this article, shall reduce local funds allocated for auxiliary and service personnel salaries used for supplementing federal and state funds provided for such salaries.

The county boards shall review each auxiliary and service personnel employee job classification annually and shall reclassify all auxiliary and service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant
to this article for salaries for auxiliary and service personnel
who are improperly classified by such county boards.

The state board of education is hereby authorized to estab-
lish other class titles of auxiliary and service personnel posi-
tions and jobs not listed in this section. The state board of
education is further authorized to provide appropriate pay
grades for such positions and jobs but pay shall be established
within the minimum salary scale in section eight-a of this
article.

No auxiliary or service employee, without his written con-
sent, shall be reclassified by class title or relegated to any
condition of employment which would result in a reduction
of his salary earned during the current fiscal year or which
would result in a reduction of his salary for which he would
qualify by continuing in the same job position and classifica-
tion held during said fiscal year.

Any board failing to comply with the provisions of this
article may be compelled to do so by mandamus, and shall be
liable to any party prevailing against the board for court
costs and his reasonable attorney fee, as determined and
established by the court.

The provisions of this section shall become effective the
first day of July, one thousand nine hundred seventy-eight.

The state superintendent of schools shall compile, from
information submitted by the county boards of education, a
report containing the number of personnel, pay classifications
and years of experience of custodians and other auxiliary and
service personnel who are required to work an interrupted
daily work schedule, and the ratio of cooks to school lunches
served and shall report to the Legislature on the first day of the
regular session thereof in the year one thousand nine hundred
seventy-nine his findings, conclusions and recommendations
with respect to such matters.
§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

**STATE MINIMUM PAY SCALE**

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**CLASS TITLE**

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<td>Aide II</td>
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<tr>
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<td>Bus Operator</td>
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<td>Buyer</td>
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<td>Cabinet Maker</td>
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<td>Custodian III</td>
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<td>Custodian IV</td>
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<td>Draftsman</td>
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<td>Office Equipment Repairman I</td>
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<tr>
<td>Painter</td>
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<td>Plumber I</td>
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CLASS TITLE | PAY GRADE
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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 | N
Truck Driver | N
Warehouse Clerk | C
Watchman | B
Welder | F

1 On and after the first day of July, one thousand nine hundred seventy-eight, the minimum monthly pay for each auxiliary and service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale” as set forth in this section, and the minimum monthly pay for each auxiliary and service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the “state minimum pay scale” set forth in this section.

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 band 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 reenacted; 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 reenacted; that sections thirteen, fourteen and twenty-four, article nine of said chapter be amended and reenacted, all to read as follows:

Article
2. Registration of Voters.
3. Voting by Absentees.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
7. Regulation and Control of Elections.
8. 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 hundred eighty and at the June primary election in the year one thousand nine hundred eighty-two, and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large.

12 At such primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the senatorial district in which such county is situated and of the delegate district in which such county is situated if
such county be situated in a delegate district. At the same
time such voters in each magisterial district or executive
committee district, as the case may be, of the county shall elect
one male and one female member of the party's county
executive committee.

For the purpose of complying with the provisions of this
section the county commission shall create such executive com-
mittee districts as they shall determine, which such districts
shall not be fewer than the number of magisterial districts
in such counties nor shall they exceed in number the fol-
lowing: Fifty for counties having a population of one hundred
thousand persons or more; forty for counties having a
population of fifty thousand to one hundred thousand; ten
for counties having a population of thirty thousand to fifty
thousand; and such districts in counties having a population of
less than thirty thousand persons shall be coextensive with
the magisterial districts.

The executive committee districts shall not cross magisterial
district lines, shall be as nearly equal in population as prac-
ticable, and shall each be composed of compact, contiguous
territory. The county commissions shall constitute the execu-
itive committee district to be effective for the term of office
of executive committee members elected at the one thou-
sand nine hundred seventy-eight primary election and there-
after. The county commissions shall change the territorial
boundaries of such districts as necessary, only if there is an
increase or decrease in the population of such district as
determined by a decennial census and such changes must be
made within two years following such census.

All members of executive committees, selected for each
political division as herein provided, shall reside within the
county or district from which chosen. The term of office of all
members of executive committees elected at the June primary
in the year one thousand nine hundred eighty, shall begin on the
first day of July, following said June primary, and shall con-
tinue for two years thereafter and until their successors are
elected and qualified. Vacancies in the state executive com-
mittee shall be filled by the members of the committee for
the unexpired term. Vacancies in the party's executive com-
mittee of a congressional district, senatorial district, delegate
district or county shall be filled by the party's executive com-
mittee of the county in which such vacancy exists, and shall be
for the unexpired term.

As soon as possible after the first day of July, following
the election of the new executive committees, as herein pro-
vided, they shall convene within their respective political
divisions, on the call of the chairman of corresponding out-
going executive committees, or by any member of the new
executive committee in the event there is no corresponding
outgoing executive committee, and proceed to select a chair-
man, a treasurer, and a secretary, and such other officers as
they may desire, each of which officers shall for their respec-
tive committees perform the duties that usually appertain to
such offices.

§3-1-21. Printing of ballots; number and requirements; packaging
and sealing.

It shall be the duty of the board of ballot commissioners for
each county to provide printed ballots for every election for
public officers in which the voters or any of the voters within
the county participate, and cause to be printed, on the ap-
propriate ballot, the name of every candidate, but in no case
shall the ballot contain any title, position, rank, degree, or such,
including but not limited to doctor, reverend, PhD., or the
equivalent, whose name has been certified to or filed with the
clerk of the circuit court of the county in any manner pro-
vided for in this chapter. In any case wherein the Constitution
or statutes limit or prescribe the number of candidates or
elected officers to be selected by the voters in any district or
other governmental subdivision, the ballot commissioners, in
the preparation of such ballots, shall cause to be printed
thereon, in plainly worded language, the number of candidates
to be voted for in each district or other governmental sub-
division. The printing of the ballots, and all other printing
caused to be done by the board of ballot commissioners, shall
be contracted for with the lowest responsible bidder. Ballots
other than those caused to be printed by the respective boards
of ballot commissioners, according to the provisions of this
chapter, shall not be cast, received or counted in any election.
For each such election to be held in their county and at least thirty days before the date of such election, the board of ballot commissioners shall cause to be printed official ballots to not more than one and one-fifth times the number of registered voters in the county. Provisions of article five of this chapter shall govern the printing of ballots for primary elections. The ballots so printed shall be wrapped and tied in packages, one for each precinct in their county, containing ballots to the number of one and one-twentieth times the number of registered voters in such precinct. Each package of ballots shall be sealed with wax, and plainly marked with the number of ballots therein, the name of the magisterial district, and the number of the voting place therein, to which it is intended to be sent. The names of the ballot commissioners shall also be endorsed thereon.

§3-1-32. Opening and closing polls; procedure.

At the time of opening the polls in all precincts wherein voting machines are not to be used, the election commissioners shall examine the ballot box and ascertain that there are no ballots in the same, and they shall thereupon securely lock the box and give one key to one of the commissioners and one to a commissioner of the opposite political party, who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives and for that purpose. At or before opening the polls, the commissioners of election shall open the package containing the ballots in such manner as to preserve the seals intact and thereupon deliver all of the ballots to the poll clerk. Before any voter is permitted to vote, the commissioners of election shall proclaim that such election is opened. When the polls are closed, proclamation must be made of the fact by one of the commissioners of election to the people outside, in a loud and audible tone of voice, and a minute of such proclamation and of the time when it was made must be entered on the pollbooks by the clerks. The election commissioner shall permit those electors to vote who are present at the polling place prior to the hour specified for the closing of the polls: Provided, That at that time they are in a line awaiting their turn to vote within the voting room itself or, if
the line extends outside of the voting room itself, within that line. In that event an election commissioner from each party shall immediately after the closing proclamation begin with the last voter in line and together supply the voters within the line with waiting-voter permits which shall be prescribed by the secretary of state. Each voter shall sign his permit in the presence of both commissioners who shall then likewise affix their signatures to the permit in the presence of the voter and each other. After each such voter in line has received and signed his permit and the election commissioners have affixed their signatures thereto, voting shall be resumed. Each voter shall present his permit to one of the poll clerks so that the signature thereon may be compared to the voter’s signature when he signs the pollbook. Each permit so presented shall be attached to the page in the pollbook on which the voter affixed his signature. In no case shall any person who arrives at the polling place after the closing hour be given a waiting-voter permit or be allowed to vote. After the final voter presents his waiting-voter permit and casts his ballot no more ballots shall be cast or received.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

Any person offering to vote in an election shall, upon entering the election room, clearly state his name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If such person is found to be duly registered as a voter at that precinct, he shall be required to sign his name in the space marked “signature of voter” on the pollbook prescribed and provided for the precinct. If such person be physically or otherwise unable to sign his name, his mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter’s mark shall be indicated immediately under such affixation. No ballot shall be given to such person until he so signs his name on the pollbook or his signature is so affixed thereon.

When the voter’s signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to
the voter to be voted by him then without leaving the election
room. If he returns the ballot spoiled to the clerks, they shall
immediately mark such ballot "spoiled" and the same shall be
preserved and placed in a spoiled ballot envelope together with
other spoiled ballots to be delivered to the board of canvassers
and deliver to the voter another official ballot, signed by the
clerks on the reverse side as before done. The voter shall there-
upon retire alone to the booth or compartment prepared within
the election room for voting purposes and there prepare his
ballot, using a ballpoint pen of not less than five inches in
length or other indelible marking device of not less than five
inches in length. In voting for candidates in general and spe-
cial elections, the voter shall comply with the rules and pro-
cedures prescribed in section five, article six of this chapter.

It shall be the duty of a poll clerk, in the presence of the
other poll clerk, to indicate by a check mark inserted in the ap-
propriate place on the registration record of each voter the fact
that such voter voted in the election. In primary elections the
clerk shall also insert thereon a distinguishing initial or initials
of the political party for whose candidates the voter voted. If a
person is challenged at the polls, such fact shall be indicated by
the poll clerks on the registration record together with the name
of the challenger. The subsequent removal of the challenge
shall be recorded on the registration record by the clerk of the
county commision.

No voter shall receive any assistance in voting unless (1) (a)
his registration record indicates that because of illiteracy, he is
unable to read the names on the ballot, or that he has a physical
disability which renders him unable to see or mark the ballot, or
to operate the voting machine, the exact nature of the physical
disability being recorded on the registration record, or (b) he
shall make an affidavit, the form of which shall be prescribed
by the secretary of state, that because of a physical disability
which renders him unable to see or mark the ballot, or to oper-
ate the voting machine, the exact nature of the physical disabil-
ity being stated therein; and (2) a poll clerk of each political
party determines that he is illiterate or suffers from the physical
disability stated on his registration record or in his affidavit and
that such physical disability renders him then unable to see or
mark the ballot, or to operate the voting machine.
Any voter so determined to be qualified to receive assistance in voting under the provisions of this section may declare his choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to such voter the names of candidates on the ballot as so prepared; or such voter may require the election commissioners to indicate to him the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his ballot in the manner hereinbefore provided, or may request the election commissioners, in the presence of the voter and in the presence of each other, to mark the ballot as he directs.

If the voter is unable to mark his ballot because of blindness and the voter's registration records so indicate such blindness, and if he shall so elect, said poll clerks shall both withdraw, and permit the voter to be assisted by any duly registered voter designated by such voter.

Any voter who requests assistance in voting but who is determined not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.

Any one or more of the election commissioners or poll clerks in the precinct may challenge such ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion (1) either the registration record or affidavit of the person who received the assistance in voting the ballot does not indicate a legally sufficient reason for such assistance, or (2) the person who received assistance in voting is not so illiterate as to have been unable to read the names on the ballot, or (3) that he did not have such a physical disability as to have been unable to see or mark the ballot or to operate the voting machine. The election commissioneer or poll clerk or commissioners or poll clerks making such challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.
Election commissioners providing assistance to voters under the provisions of this section shall not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and shall not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and shall not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.

In accordance with instructions issued by the secretary of state, the clerk of the county commission shall provide a form entitled "List of Assisted Voters," the form of which list shall likewise be prescribed by the secretary of state. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the commissioner from each party who assisted the voter certifying to the fact that they had determined that the voter who received assistance in voting the ballot was qualified to receive such assistance under the provisions of this section. If no voter shall have been assisted in voting the ballot as herein provided, the commissioners shall likewise make and subscribe to an oath of that fact on such list.

After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the poll clerks thereon shall be seen. The voter shall then announce his name and present his ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it, so as to disclose its content. When the voter has voted, he shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and shall not return, except by permission of the commissioners.
Following the election, the affidavits required by this section from assisted voters together with the "List of Assisted Voters," shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make such oaths and list available for public inspection and who shall preserve the same for a period of five years or until disposition is authorized or directed by the secretary of state, or court of record.

Any person making an affidavit required under the provisions of this section who shall therein knowingly swear falsely, or any person who shall counsel, or advise, aid or abet another in the commission of false swearing under this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail for a period of not more than one year, or both.

Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when such voter is known to such election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the penitentiary for a period of not less than one year nor more than five years, or both fined and imprisoned.

The term "assistance in voting," as used in this section, means assistance in physically marking the official ballot for a voter, or reading or directing the voter's attention to any part of the official ballot, or physically operating the voting machine.

The term "physical disability," as used in this section, means blindness or such degree of blindness as will prevent the voter from seeing the names on the ballot, or amputation of both hands, or such disability of both upper extremities that neither can be used to make cross marks on the ballot, or operate the voting machine, or confinement to wheelchair which prevents or restricts use of voting machine.

§3-1-47. Candidate not to run for more than one office; exceptions.

No person shall be a candidate for more than one office
at any election: Provided, That such candidate for an office
may also be a candidate for president or vice president of
the United States, for membership on a political party execu-
tive committee or for delegate to a political party national
convention. Any candidate who violates this section shall be
disqualified from serving in any office to which he was elected
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.
§3-2-22. 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.

A permanent registration system shall hereby be established
which shall be uniform throughout the state and all of its
subdivisions. No voter so registered shall be required to
register again for any election while he continues to reside
at the same address, or, having moved from such address, is
properly transferred according to the provisions of section
twenty-seven of this article, unless his registration is canceled
as provided in this article.

Within one hundred and twenty days following any election,
the clerk of the county commission shall, as evidenced by the
presence or absence of signatures on the pollbooks for such
election, correct any errors or omissions on the voter registra-
tion records appertaining to such election resulting from the
poll clerks erroneously checking or failing to check the registra-
tion records as required by the provisions of section thirty-four,
article one of this chapter; and, within the same time period
following each statewide primary and general election and at
the same time that such checkup is made as is by this para-
graph required, the clerk shall cancel the registration of each
person who has failed to vote at least once during a period
covering two statewide primary and general elections as indicated by his registration record. Any person who has had his registration for that reason canceled shall, by letter, be given proper notice thereof by the clerk of the county commission, to the effect that in order to vote he must register again or execute and file, not later than thirty days before the next primary or general election, with the clerk, an affidavit, the form of which shall be prescribed by the secretary of state, stating that he desires to be reinstated as a qualified voter at the same address and the clerk shall replace the registration card of the voter in the registration records. A blank form of such affidavit shall be included with and accompany the aforesaid notice to the voter.

§3-2-10. County commission's duties and powers; hours during registration period.

Subject to the authority of the secretary of state, the county commission shall be chief registration authority in each respective county and all subdivisions therein, and shall supervise the county clerk and registrars in the performance of their respective duties.

The county commission shall have power on its own motion to summon and to interrogate any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers, and to conduct hearings on any matters relating to registration of voters.

Notwithstanding any provision of any other section of this code, the office of the clerk of the county commission shall remain open from 9:00 a.m. until 9:00 p.m. on the Friday, Saturday and Monday prior to the close of the registration period.

§3-2-11. Appointment of registrars; qualifications and duties.

The county commission of each county may, not less than eighteen nor more than twenty weeks prior to the date of a statewide primary election, appoint two competent persons, for one or more but not to exceed ten voting precincts in the county, to act as registrars for the purpose of making a
biennial checkup allowed by this article. No person shall be eligible to appointment as a registrar, or in any way act as such, if he has been convicted of a felony; or if he holds any elective or appointive office; or is a public employee, under the laws of this state or of the United States; or cannot read or write the English language; or is a candidate to be voted for at such election. If any such registrar shall fail or refuse to serve or is properly dismissed, the vacancy shall be filled either by the county commission or by the clerk thereof in vacation, in the manner provided for the appointment of registrars. Each registrar, before entering upon the discharge of his duties, shall take an oath that he will perform the duties of the office to the best of his ability, which oath shall be filed in the office of the clerk of the county commission.

An equal number of such registrars shall be selected from the two political parties which at the last preceding election, cast the highest number and next highest number of votes in the county in which the election is to be held. The county commission shall, at least four weeks prior to making such appointment, request the county executive committee of each of the said two political parties to submit a list of names, equal to one half of the total number to be appointed, of persons qualified to act as registrars; and the county commission shall, if such lists are submitted, appoint the respective registrars therefrom, and shall notify each registrar of his appointment. Every such list so presented shall be filed and preserved for one year by the clerk of such commission in his office. Any and every act performed by any registrar under the provisions of this article shall be void unless performed in conjunction with a registrar of the opposite political party at the same time and place.

Before acting, all such registrars shall attend a session, or sessions, of instruction by the clerk of the county commission, or some person designated by him, concerning the performance of their duties.

Immediately following such instruction the clerk of the county commission shall deliver to the registrar a copy of
the laws and regulations relating to registration of voters and
all necessary forms and other supplies, including a certified
list of all registered voters within the precinct or precincts
for which such registrars were appointed, upon such
form as may be prescribed by the secretary of state. Such
registrars shall thereupon proceed together to make a house-
to-house canvass in their precincts for the purpose of making
the biennial checkup allowed by section twenty-one of this
article. Each biennial checkup subsequent to the year one
thousand nine hundred seventy-eight shall be completed at
least sixty days before the statewide primary election follow-
ing the appointment of the registrars. In making such checkup
the registrars shall not again register any person who is already
registered in such precinct, but shall determine whether or
not such person is duly registered and qualified to vote therein.

§3-2-12. Additional duties of registrars and clerks; checking;
notices.

Upon the completion of the biennial checkup, the registrars
shall return the records and lists to the clerk of the county
commission, together with an affidavit that the returns, records
and lists returned to the clerk are true and correct to the
best of their knowledge and belief. The clerk of the county
commission shall make the necessary changes in his other
registration records. The list checked by the registrars in
each precinct shall be compared with the register of deaths
kept by the clerk of the county commission in his office.
Each person named in the list who is not shown to have been
found and so checked by the registrars and whose death is
not shown on such register shall be given proper notice
by the clerk of the county commission that his registration
has been canceled and that in order to vote he must register
again. The notice shall be mailed to such person’s last
address appearing on the registration record.

The clerk of the county commission is authorized to pub-
lish such notices as may be proper in his opinion to advise
the electorate of the respective dates after which transfers
and registration, and changes of registration, may not be
made with respect to any general or primary election.
§3-2-13. Compensation of registrars.

As compensation for his services, each registrar shall be paid at a rate to be fixed by the county commission, but not more than twenty-five dollars per day, and, in addition, shall be reimbursed for his travel expenses.


Beginning with the year one thousand nine hundred seventy-eight and every two years subsequent thereto, there may be a biennial checkup of voter registration in each precinct of each county in this state if in the discretion of a county commission such checkup is deemed necessary and advisable for its county. The registrars, according to directions prescribed by the secretary of state and as provided in sections eleven and twelve of this article, shall proceed to register the names of all persons not registered but who are qualified to register, and shall also check and, if necessary, alter, amend, correct or cancel the registration records of the voters of the respective precincts, so as to provide a complete and 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.

The clerk of the county commission may register any qualified person as a voter by having him fill in and complete the prescribed voter registration form and having him sign same under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year.

Beginning with the year one thousand nine hundred seventy-eight and every two years subsequent thereto, the clerk or one of his deputies shall, during the biennial checkup period, for the purposes of registration of voters, visit every public or private institution, excluding hospitals, in which resides aged, infirm, disabled or chronically ill persons and every high school with students eligible by age for registration, and shall establish at least one temporary registration office per
Magisterial or tax district, whichever is more numerous, for the purpose of registering the names of persons not so registered but who are qualified to register, or to alter, amend, correct or cancel such registration records. Such registration offices shall be open at least three days, including one Saturday and one evening within the sixty day period prior to each primary and each general election but prior to the thirtieth day before any such election at such hours as shall be posted and advertised as a Class III-0 legal advertisement with the publication area being the magisterial district. The clerk of the county commission shall also solicit public service advertising of such registration offices and times on radio, television and newspapers serving that county.

Any applicant not otherwise included under provisions of previous sections who is physically unable to appear before the clerk of the county commission, or at the temporary office may request the clerk of the county commission or one of his deputies to, and, upon proper request they shall, deliver or cause to be delivered in person or by mail the forms necessary to register.

Within fifteen days following receipt by the clerk from the state registrar of vital statistics or from the local registrar of vital statistics of a certificate of death which has occurred in his county or of a person who last resided prior to death in his county, the clerk of the county commission shall cancel the voter registration, if any, of the person shown to be deceased by such certificate.

For purposes of making certain that the voter registration records of the various counties do not contain voter registration of persons who are deceased, the clerks shall, sixty days prior to a general election, review each certificate of death received by him from the state registrar of vital statistics or from the local registrar of vital statistics and shall cancel the voter registration, if any, of each person shown to be deceased by any such certificate and whose voter registration has not previously been canceled. By the forty-fifth day prior to a general election each clerk of a county commission shall certify to the secretary of state, as the chief registration
official of the state, that he has performed the duty required
by this paragraph.

If found necessary, the county commission may order and
direct the clerk of the county commission to maintain addi-
tional office hours in the evening or at other proper times and
places for accommodation of voter registration.

§3-2-27. Registration transfers.

Whenever a voter removes his residence from one place
to another within the same county he shall request that the
change be made on his registration record. Such request
shall be made by filling in, and, if he is able, signing
under oath or affirmation the necessary form, which may be
procured in person or by mail from the office of the clerk
of the county commission, or from the registrars during the
biennial checkup. The form of such notice shall be pre-
scribed by the secretary of state.

Upon receipt of such notice the clerk of the county com-
mission shall cause the signature thereon to be compared
with the signature of the applicant upon his registration card
and, if such signatures correspond, shall make entry of such
change of residence upon all the registration records and
the necessary transfers in the files. If the clerk of the county
commission is not satisfied as to the genuineness of the
signature on the notice of change of residence, and if the
right of such applicant to register is challenged according to
the procedure herein prescribed, such transfer shall not be
made.

Transfers of the registration record may be made through-
out the year except during the thirty days immediately
preceding any election, and if any voter shall move from
one precinct to another within the county within the thirty-
day period, he shall, for that election only, vote in the precinct
from which he moved. If any voter shall move from one
place to another within the precinct in which he is registered,
whether within or more than thirty days preceding any
election, he shall be permitted to vote in that precinct, and
the election commissioners upon request of the registrant
shall make entry of such change of residence upon the voter's
§3-2-28. Procedure on change of registered voter’s name.

Whenever a voter, previously registered, shall change his name, such person shall be required to register again. For this purpose such person may register by mail in the same manner as an absentee registrant, according to the procedure prescribed in section twenty-three of this article. Upon such registration, the clerk of the county commission shall cancel the registration record bearing the voter’s former name. When such a change of name is made during the thirty days immediately preceding any election, such voter, if duly registered, may vote at the election under his former name.

§3-2-30. Time of registration prior to election; changes.

No person may vote in an election when he has registered or his voter registration has been altered, amended or corrected within a period of thirty days next preceding such election, but this inhibition shall not prevent, during such period of thirty days, additional registrations and changes in voter registrations with reference to future elections. If, during such period of thirty days preceding an election, a voter is registered or his voter registration is altered, amended or corrected, he shall not be permitted or qualified to vote at such election.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5a. Hand delivery of absent voter’s ballot; penalties.

A person who completes the absent voter’s ballot provided for by section five of this article may have someone personally deliver the sealed envelope during regular business hours at the office of the clerk of the circuit court of the county in which he is registered to vote not more than fourteen days before the election and on any day thereafter up to and including the Saturday next preceding the date of the primary or general election or, in the case of special elections, up to and including the third day next preceding the day of any such special election (in computing such third day, the day of conducting the special election, shall be excluded): Provided, That
no person shall be permitted to personally deliver more than two absentee ballots preceding any election.

The person who personally delivers the sealed envelope shall be required to certify that he or she has not altered the ballot. Any person who makes a false certification shall be in violation of the penalty provisions of article nine of this 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.

The ballot commissioners of any county in which an electronic voting system is to be used in any election shall cause to be printed for use in such election the ballots or ballot labels, as appropriate, for the electronic voting system. The ballot labels so printed shall total in number one and one-half times the total number of vote recording devices to be used in the several precincts of the county in such election. All such labels shall be delivered to the clerk of the county commission at least thirty days prior to the day of the election in which such labels are to be used. The labels shall contain the name of each candidate, but in no case shall the ballot contain any title, position, rank, degree, or such, including but not limited to "doctor," "reverend," "PhD.,” or the equivalent, and each question to be voted upon and shall be clearly printed or typed in black ink on clear white material of such size as will fit the vote recording devices. Arrows may be printed on the ballot labels to indicate the place to punch the ballot card, which may be to the right or left of the name or proposition.

The titles of offices may be arranged on the ballot labels in vertical columns or in a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one column or on one ballot label page, the ballot label shall be clearly marked that the list of candidates is continued on the following column or page, and so far as possible, the same number of names shall be printed on each column or page. The names of candidates for each office shall
be printed in vertical columns or on separate pages, grouped by
the offices which they seek.

In elections in which voters are authorized to vote for per-
sons whose names do not appear on the ballot card, a separate
write-in ballot, which may be in the form of a paper ballot or
card, shall be provided if required to permit voters to write in
the title of the office and the names of persons whose names are
not on the ballot, for whom he wishes to vote. The manner of
voting for write-in candidates upon electronic voting devices
shall be as prescribed by rules and regulations of the secretary
of state.

One set of ballot labels shall be inserted in the vote recording
device prior to the delivery of such device to the polling place.
The remainder of such ballot labels for each device shall be re-
tained by the clerk of the county commission for use in the
event the set so inserted in such device becomes lost, mutilated
or damaged.

In addition to all other equipment and supplies required by
the provisions of this article, the ballot commissioners shall
cause to be printed a supply of instruction cards, sample bal-
lots, facsimile diagrams of the vote recording device ballot and
official printed ballots or ballot cards adequate for the orderly
conduct of the election in each precinct in their county. In ad-
dition they shall provide all other materials and equipment
necessary to the conduct of the election, including voting
booths, appropriate facilities for the reception and safekeeping
of ballot cards, the ballots of absent voters and of challenged
voters and of such "independent" voters who shall, in primary
elections, cast their votes on nonpartisan candidates and public
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.

Primary elections shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the first Tuesday in June in the year one thousand nine hundred eighty and in each second year thereafter.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a 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.

The primary election held in the year one thousand nine hundred seventy-eight shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May in the year one thousand nine hundred seventy-eight.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

§3-5-6. Election of county board of education members at primary elections.

An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections as now provided by law, but upon a nonpartisan ballot printed for the purpose. At the election of members of the county board of education held in the year one thousand nine hundred eighty and each such election held thereafter, each candidate seeking the office shall be identified as to the magisterial district from which he is a resident. In such nonpartisan election the person receiving the highest number of votes shall be elected for a long term, and if more
than one is to be elected for a long term, the one receiving
the next highest shall be elected; and if more than two are to
be elected the candidate or candidates receiving the next highest
votes shall be declared elected for any short term or terms,
as the case may be, to fill vacancies; but no more than two
such members shall be elected from the same magisterial
district, and then only when such magisterial district does
not have a holdover member of said board, and if such
magisterial district has one holdover member on said board
only one member shall be elected as aforesaid; and if more
persons from a magisterial district receive the highest number
of votes in said election, then of such persons only the person
or persons having the highest vote who do not make the
aggregate number of elected members and holdover members
more than two from such magisterial district shall be de-
clared elected, and the remaining members shall be declared
from the highest from other magisterial districts; and in no
event shall any member be declared elected from the same
magisterial district wherein reside two already elected or other-
wise qualified members of such board who will continue to
hold office after the beginning of the term for which such
election was held.

It is declared to be the intent of this statute that any person
declared to be elected under the preceding provisions of the
section shall take office as a duly elected member or members,
even though he, she or they may not have received a majority
or plurality of all votes cast at such election.

In case of tie votes for county board of education member
candidates in any primary election, the provisions of section
twelve of article six of this chapter shall be invoked and shall
control in determination of the election.

§3-5-7. Filing announcements of candidacies; requirements; when
section applicable.

Any person who is eligible to hold and seeks to hold an of-
face (including that of member of any political party executive
committee) shall file with the secretary of state, if it be an office
to be filled by the voters of more than one county, or with
the clerk of the circuit court, if it be for an office to be
filled by the voters of a county or subdivision less than a county, a certificate declaring himself a candidate for the nomination for such office, which certificate shall be in form or effect as follows:

I, ____________________________, hereby certify that I am a candidate for the nomination for the office of ____________ to represent the ____________ Party, and desire my name printed on the official ballot of said party to be voted at the primary election to be held on the ____________ day of ____________, 19_____; that I am a legally qualified voter of the County of ____________, State of West Virginia; that my residence is number ___ of _________ Street in the City (or Town) of __________ in __________ County in said State; that I am eligible to hold the said office; that I am a member of and affiliated with said political party; that I am a candidate for said office in good faith.

______________________________
Candidate

Signed and acknowledged before me this ______ day of ____________, 19_____

______________________________
Signature and official title of person before whom signed.

Any candidate for delegate to the national convention of any political party shall provide, on a form prescribed by the secretary of state, the information required in the certificate hereinbefore described and shall also provide the name of the person he prefers as the presidential nominee of his party upon the first convention ballot, or if he has no preference, a statement that he is uncommitted: Provided, That any candidate for delegate may change his statement of presidential preference by notifying the secretary of state by registered letter, at least forty-five days prior to the day fixed for the primary election.

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths,
who shall certify the same. Any person who knowingly provides false information on said certificate shall be guilty of an offense and shall be punished as set forth in section twenty-three, article nine of this chapter.

Such certificate shall be filed with the secretary of state or the clerk of the circuit court, as the case may be, not earlier than the last Monday in February next preceding the primary election day, and not later than the last Saturday of March next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty and every primary election held thereafter.

§3-5-9. Certification and posting of candidacies.

During the week next following the last Saturday of March next preceding the day fixed for the primary election, the secretary of state shall arrange the names of all the candidates, who have filed announcements with him, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of this chapter, and shall forthwith certify the same under his name and the lesser seal of the state, and file the same in his office.

Such certificate of candidates shall show (1) the name and residence of each candidate, (2) the office for which he is a candidate, (3) the name of the political party of which he is a candidate, (4) upon what ballot his name is to be printed and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his party, or if he has no preference, the word “uncommitted.”

The secretary of state shall post a duplicate of such certificate in a conspicuous place in his office and keep same posted until after the primary election.

Immediately upon completion of such certification, the
secretary of state shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the circuit court in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in such county. He shall transmit such certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the thirtieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty and every primary election held thereafter.

§3-5-10. Publication and printing of ballots; number.

Between the thirtieth and the fifteenth days next prior to the date of the primary election, the ballot commissioners of each county shall prepare from the lists and certificates of announcements, as provided in this article, a sample official primary ballot for each party, placing thereon the names of all the candidates of the political party, but in no case shall the ballot contain any title, position, rank, degree, or such, including but not limited to "doctor," "reverend," "PhD.,” or the equivalent, and, as the case may be, the nonpartisan candidates to be voted for at such primary election. In the case of a candidate for delegate to the national convention of any political party the ballot commissioners shall, in addition, include in the ballot the name of the person the candidate prefers on the first convention ballot as the presidential nominee of his party, or if he has no preference the word "uncommitted." During the two weeks next preceding the primary election they shall publish such sample official primary election ballot as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The second publication shall be on the last day upon which each newspaper is published before the election.

The ballot commissioners shall determine the total number
of official ballots required for conducting the primary election in all of the election precincts of the county and shall cause same to be printed at least fifteen days next preceding the date of the election and made ready for delivery to the several precincts along with other election supplies. The number of official ballots of a political party prepared for delivery to a precinct shall not exceed one and one-twentieth times the number 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 elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voter in his voting for candidates in general and special elections:

(a) If the voter desires to vote a straight ticket, or, in other words, for each and every candidate for one party for whatever office nominated, he shall either:

(1) Make a cross mark in the circular space below the device and above the name of the party at the head of the ticket; or

(2) Make a cross mark on the left and opposite the name of each and every candidate of such party in the blank space provided therefor; or

(3) Mark out, by lines, all the tickets on the ballot, other than the ticket he desires to vote.

(b) If the voter desires to vote a mixed ticket, or in other words, for candidates of different parties, he shall either:

(1) Omit making a cross in the circular space above the name of the party, and make a cross mark in the blank space before the name of each candidate for whom he desires to vote on whatever ticket the name may be; or

(2) Make a cross mark in the circular space above the name of the party for some of whose candidates he desires to
vote, and then make a cross mark before the name of any
candidate of any other party for whom he may desire to vote,
in which case the cross mark in the circular space above the
name of the party will cast his vote for every candidate on
the ticket of such party except for offices for which candidates
are marked on other party tickets, and the cross marks
before the name of such candidates will cast his vote for
them; or

(3) Write with black lead pencil or other means the
name of any person for whom he desires to vote in the space
immediately below the name of the opposing candidate for
the same office, on the ticket voted by him, and the name
so written shall be counted.

If, in marking either a straight or mixed ticket as above
defined, a cross mark is made in the circular space above
the name of a party at the head of the ticket, and also one
or more cross marks made before the name or names of
candidates on the same ticket for offices for which candidates
on other party tickets are not individually marked, such
marks before the name of candidates on the ticket so marked
shall be treated as surplusage and ignored.

If the voter desires to vote for any person whose name
does not appear on the ticket, he may substitute the name
by writing it with black lead pencil or other means in the
proper place, and making a cross mark in the blank space at
the left of the name so written. The use of stamps, stickers,
tapes, labels or any other means of writing in the name of
a candidate on the ticket shall be permitted in accordance
with rules and regulations prescribed by the secretary of state
for such manner of voting. The secretary of state may pro-
scribe devices which would cause mechanical difficulty with
voting machines or electronic devices or which would obliter-
ate or deface a paper ballot or any portion thereof, but the
secretary of state shall preserve the right to vote by a write-in
vote.

If the voter marks more names than there are persons to
be elected to an office, or if, for any reason, it is impossible
to determine the voter's choice, for an office to be filled,
the ballot shall not be counted for such office.

No ballot shall be rejected for any technical error which 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.

Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by said section eight of this article and also including the treasurer or equivalent officer of such association or organization, advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, liabilities incurred, by such candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of such committee, or any person acting under its authority or on its behalf.

Each person who files a certificate of candidacy for nomination or election in this state as provided for in article five of this chapter and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind supporting or opposing the candidacy of any such candidate, or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon,
shall, within fifteen days following the first Saturday of February next preceding the primary election day, file a detailed itemized statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth all contributions and expenditures concerning the candidacy of that person or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon. Such statement shall include all contributions received or expenditures made which have taken place by the date of such report, subsequent to any previous report filed within the previous five years under this section or under the former provisions of this section, or if no report was filed, all contributions received or expenditures made within the preceding five years. The specific information required to be included in such statement is provided for in section five-a of this article.

Not less than five nor more than ten days before each primary or other election, and again within thirty days after each primary or other election, every candidate for nomination or election, and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind advocating or opposing the passage or defeat of any issue, thing or item to be voted upon or pertaining to the holding or conducting of any election, and the treasurer of every political party committee shall file with the officers hereinafter prescribed a detailed itemized financial statement subscribed and sworn to before an officer authorized to administer oaths, setting forth all financial transactions which have taken place by the date of such report in connection with such primary or other election as provided for in section five-a of this article.

Every person who shall announce as a write-in candidate for any elective office and his financial agent or election organization of any kind, shall comply with all of the requirements of this section after public announcement of such person's candidacy has been made.

§3-8-Sa. Information required in financial statement.

Each financial statement as required by this article shall show the following information:
(a) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

(b) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(c) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars by any one contributor is prohibited unless it is by money order or by check, and a violation of this provision is subject to section five-d of this article. As used herein, the term "check" shall have the meaning ascribed to that term in section one hundred four, article three, chapter forty-six of this code.

(d) The total amount of contributions received during the period covered by the financial statement.

(e) The first name, middle initial, if any, and the last name, residence and mailing address in the case of an individual, or the full name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required herein, such lump sum expenditures shall be accounted for in the same manner as provided herein.

(f) The total expenditure for the nomination, election or defeat of a candidate or any person or organization ad-
vocating or opposing the nomination, election or defeat of
any candidate, or the passage or defeat of any issue, thing
or item to be voted upon, in whose behalf an expenditure was
made or a contribution was given for the primary or other
election.

(g) The total amount of expenditures made during the
period covered by the financial statement.

(h) Any unexpended balance at the time of making the
financial statements herein provided for, shall be properly
accounted for in that financial statement and shall appear
as a balance in the next following financial statement.

(i) Each financial statement required by this section shall
contain a separate section setting forth the following infor-
mation for each fund-raising event held during the period
covered by the financial statement:

(1) The type of event, date held, and address and name, if
any, of the place where the event was held.

(2) All of the information required by subdivision (c) of
this section.

(3) The total of all moneys received at the fund-raising
event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

For the purpose of this section the term “fund-raising event”
means an event such as a dinner, reception, testimonial, cock-
tail party, auction or similar affair through which contributions
are solicited or received by such means as purchase of a tick-
et, payment of an attendance fee or through purchase of goods
or services.

(j) Any contribution or expenditure made by or on behalf
of a candidate for public office, to any other candidate, or
committee for a candidate for any public office in the same
election shall comply with the provisions of this article.

(k) No person, firm, association or committee shall make
any contribution except from his own funds, unless such
person, firm, association or committee discloses in writing to
the person required to report under this section the first name,
middle initial, if any, and the last name in the case of an indi-
individual, or the full name in the case of a firm, association or
committee; residence and mailing address; the major business
affiliation and occupation of the person, firm, association or
committee which furnished the funds to such contributor. All
such disclosures shall be included in the statement required
by this section.

(l) Any firm, association, committee or fund permitted by
section eight of this article to be a political committee shall
disclose on the financial statement its corporate or other
affiliation.

§3-8-8. Corporation contributions forbidden; exceptions; penalties;
promulgation of rules and regulations; additional powers
of state election commission.

(a) No officer of any corporation, or agent or person on
behalf of such corporation, whether incorporated under the
laws of this or any other state, or foreign country, shall
pay, give or lend, or authorize to be paid, given or lent,
any money or other thing of value belonging to such cor-
poration, to any candidate, financial agent or political com-
mittee or other person, for the payment of any primary or
other election expenses whatever. No person shall solicit
or receive such payment, contribution or other thing from
any corporation, officer or agent thereof, or other person
acting on behalf of such corporation.

(b) (1) The provisions of this section shall not be deemed
to prohibit:

(A) Direct communications, other than by newspapers of
general circulation, radio, television or billboard advertising
likely to reach the general public, by a corporation to its
stockholders and executive or administrative personnel and
their families on any subject;

(B) Nonpartisan registration and get-out-the-vote cam-
paigns by a corporation aimed at its stockholders and exec-
utives or administrative personnel and their families; and

(C) The solicitation of contributions to a separate segre-
gated fund to be utilized for political purposes by any corporate
officer, agent or any person on behalf of a corporation. Any
such fund shall be deemed to be a political committee for the
purpose of this article and subject to all reporting requirements
thereof.

(2) It shall be unlawful:

(A) For such a fund to make a contribution or expenditure
by utilizing money or anything of value secured by physical
force, job discrimination, financial reprisal or the threat of
force, job discrimination or financial reprisal, or as a con-
dition of employment, or by moneys obtained in any com-
mercial transaction;

(B) For any person soliciting a stockholder, executive
or administrative personnel and members of their family
for a contribution to such fund to fail to inform such
person of the political purposes of such fund at the time
of such solicitation;

(C) For any person soliciting any other person for a con-
tribution to such a fund to fail to inform such other person
at the time of such solicitation of his right to refuse to so
contribute without any reprisal;

(D) For a corporation, or a separate segregated fund estab-
lished by a corporation to solicit contributions to such a
fund from any person other than its stockholders and their
families and its executive or administrative personnel and
their families or to contribute any corporate funds;

(E) For a corporation, or a separate segregated fund estab-
lished by a corporation to receive contributions to such a
fund from any person other than its stockholders and their
immediate families and its executive or administrative
personnel and their immediate families;

(F) For a corporation to engage in job discrimination or
to discriminate in job promotion or transfer because of an
employee's failure to make a contribution to such fund;

(G) For such a fund directly or indirectly to make
any contribution in excess of the value of one thousand
dollars in connection with any campaign for nomination
or election to or on behalf of any elective office in the
state or any of its subdivisions, or in connection with or
on behalf of any committee or other organization or person
engaged in furthering, advancing or advocating the nomina-
tion or election of any candidate for any such office; and

(H) For a corporation to pay, give or lend, or authorize
to be paid, given or lent, any moneys or other things of
value belonging to such corporation to such fund for any
purpose. This provision shall not be deemed to prohibit
such a fund from using the property, real or personal, facili-
ties, and equipment of a corporation solely to establish, ad-
minister, and solicit contributions to the fund, subject to the
rules and regulations of the state election commission as pro-
vided in subsection (d) of this section: Provided, That such
corporation shall also permit any group of employees thereof
represented by a bona fide political action committee to use
the real property of such corporation solely to establish, ad-
minister and solicit contributions to the fund of such political
action committee, subject to the rules and regulations of the
state elections commission as provided in subsection (d) of
this section. No such property, real or personal, facilities,
equipment, materials or services of a corporation shall be
utilized for the purpose of influencing any voter or voters to
vote for a particular candidate, or in any particular manner,
or upon any particular side of any question to be decided at
any election, or to influence the result of any such election.

(I) Public utility companies and railroad companies may
not form funds or political action committees in support of
political candidates or parties, and may not use corporate
property, real or personal, facilities, equipment, materials or
services of said utility to establish, administer or solicit con-
tributions to such fund or political action committee.

(3) For the purposes of this section, the term “executive
or administrative personnel” means individuals employed by
a corporation who are paid on a salary rather than hourly
basis and who have policy making, managerial, professional
or supervisory responsibilities.
(c) Any person or corporation violating any provision of this section shall be guilty of a misdemeanor, and, on conviction, shall be fined not more than five thousand dollars. No corporation shall reimburse any person the amount of any such fine imposed pursuant to this section.

(d) The state election commission shall promulgate rules and regulations to implement the provisions of this section, which rules and regulations, insofar as practicable, shall be the same as the rules and regulations promulgated by the Federal Election Commission to carry out those provisions of 2 USC § 441b which are similar or identical to those provisions contained in this section in order that the provisions of this section and the regulations promulgated thereunder and the similar provisions of 2 USC § 441b and the regulations promulgated thereunder may be uniformly administered and applied to corporations subject to the cited section of the Federal Election Campaign Act Amendments of 1976 and to this section. The state election commission shall promulgate such rules and regulations not later than sixty days after the effective date of this subsection and in doing so shall be governed by the provisions of article three, chapter twenty-nine-a of this code.

(e) In addition to its powers and duties as set forth in article one-a of this chapter, the state election commission shall have the following powers and duties:

1. To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

2. To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

3. To involve the aid of any circuit court in the execution of its subpoena power.

4. To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto,
no later than the next term of court after receiving the
report.

It shall be the duty of the attorney general to provide such
legal and investigative assistance to the state election com-
mission as it may request and require.

Any investigation either upon complaint or initiative, shall
be conducted in an executive session of the state election com-
mission and shall remain undisclosed except upon an indict-
ment by a grand jury.

Any person who shall disclose the fact of any complaint,
investigation or report or any part thereof, or any proceed-
ings thereon, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than one thousand
dollars, nor more than five thousand dollars, and shall be
imprisoned in the county jail not less than six months nor
more than one year.

§3-8-12. Additional acts forbidden; circulation of written matter;
network advertising; solicitation of contributions; inti-
midation and coercion of employees; promise of em-
ployment or other benefits; limitations on contributions;
public contractors; penalty.

(a) No person shall publish, issue or circulate, or cause to
be published, issued or circulated, any anonymous letter, cir-
cular, placard, or other publication tending to influence voting
at any election;

(b) No owner, publisher, editor or employee of a news-
paper or other periodical shall insert, either in its advertising
or reading columns, any matter, paid for or to be paid for,
which tends to influence the voting at any election whatever,
unless directly designating it as a paid advertisement and
stating the name of the person authorizing its publication and
the candidate in whose behalf it is published;

(c) No person shall, in any room or building occupied for
the discharge of official duties by any officer or employee of
the state or a political subdivision thereof, solicit orally or by
written communication delivered therein, or in any other man-
ner, any contribution of money or other thing of value for any
party or political purpose whatever, from any postmaster or
any other officer or employee of the federal government, or
officer or employee of the state, or a political subdivision
thereof. No officer, agent, clerk or employee of the federal
government, or of this state, or any political subdivision
thereof, who may have charge or control of any building,
office or room, occupied for any official purpose, shall know-
ingly permit any person to enter the same for the purpose of
therein soliciting or receiving any political assessments from,
or delivering or giving written solicitations for, or any notice of,
any political assessments to, any officer or employee of the
state, or a political subdivision thereof;

(d) Except as provided in section eight of this article no
person entering into any contract with the state or its sub-
divisions, or any department or agency thereof, either for
rendition of personal services or furnishing any material, sup-
plies or equipment or selling any land or building to the state,
or its subdivisions, or any department or agency thereof, if
payment for the performance of such contract or payment for
such material, supplies, equipment, land or building is to be
made in whole or in part from public funds shall, during the
period of negotiation for or performance under such contract
or furnishing of materials, supplies, equipment, land or build-
ings, directly or indirectly make any contribution to any polit-
ical party, committee or candidate for public office or to any
person for political purposes or use; nor shall any person or
firm solicit any contributions for any such purpose during any
such period;

(e) No person shall, directly or indirectly, promise any em-
ployment, position, work, compensation or other benefit pro-
vided for, or made possible, in whole or in part by act of the
Legislature, to any person as consideration, favor or reward for
any political activity for the support of or opposition to any
candidate, or any political party in any election;

(f) No person shall, directly or indirectly, make any contri-
bution in excess of the value of one thousand dollars in
connection with any campaign for nomination or election to
or on behalf of any statewide or national elective office, or in
excess of the value of one thousand dollars, in connection
with any other campaign for nomination or election to or on
behalf of any other elective office in the state or any of its
subdivisions, or in connection with or on behalf of any com-
mittee or other organization or person engaged in furthering,
advancing or advocating the nomination or election of any
candidate for any such office; and

(g) No person shall solicit any contribution from any non-
elective salaried employee of the state government or of any of
its subdivisions or coerce or intimidate any such employee into
making such contribution. No person shall coerce or intimi-
date any nonsalaried employee of the state government or any
of its subdivisions into engaging in any form of political ac-
tivity. The provisions hereof shall not be construed to pre-
vent any such employee from making such a contribution or
from engaging in political activity voluntarily, without coer-
cion, intimidation or solicitation.

Any person violating any provision of this section shall be
guilty of a misdemeanor, and, upon conviction thereof, shall be
fined not more than one thousand dollars, or confined in jail
for not more than one year, or, in the discretion of the court,
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. Kepp)

[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.
§15-5-3. 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 occurrence of disasters of unprecedented size and destructiveness, resulting from enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made causes and in order to insure that preparations of this state will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health and safety and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary: (1) To create a state emergency services agency and to authorize the creation of local and regional organizations for emergency services in the political subdivisions of the state; (2) to confer upon the governor, and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided herein; and (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency service functions.

It is further declared to be the purpose of this article and the policy of the state that all emergency service functions of this state be coordinated to the maximum extent with the comparable 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.


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 na-
7 tural 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.

There is hereby created within the office of the governor an office to be known as the office of emergency services. A director of the office of emergency services, hereinafter called the director, shall be appointed by the governor in accordance with the provisions of section two-a, article seven, chapter six of this code. On and after the effective date of this article, the director of civil and defense mobilization referred to in said section two-a shall be known and designated as the director of emergency services.

The director may employ such technical, clerical, stenographic and other personnel and fix their compensation and may make such expenditures within the appropriation therefor or from other funds made available to him for the purpose of providing emergency services as may be necessary to carry out the purpose of this article. Employees of the office of emergency services shall be members of the state civil service system and all appointments of the office, except those required by law to be exempt, shall be a part of the classified service under the civil service system.

The director and other personnel of the office of emergency services shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for personnel of other state agencies.

The director, subject to the direction and control of the governor, shall be executive head of the office of emergency services and shall be responsible to the governor for carrying out the program for emergency services in this state. He shall coordinate the activities of all organizations for emergency services within the state and maintain liaison with and cooperate with emergency service and civil defense agencies and organizations of other states and of the federal government and shall have such additional authority, duties and responsibilities authorized by this article as may be prescribed by the governor.

The director shall have the power to acquire in the name of the state by purchase, lease or gift, real property and rights or easements necessary or convenient to construct thereon the
necessary building or buildings for housing an emergency services control center.

The office of emergency planning in the department of finance and administration is hereby abolished and its functions, personnel and property transferred to the office of emergency services. The department of civil and defense mobilization is hereby abolished and its functions, personnel and property transferred to the office of emergency services.

§15-5-4. Emergency services advisory council.

There is hereby created an emergency services advisory council, hereinafter called the council, which shall consist of seven members to be appointed by the governor. The council shall advise the governor and the director on all matters pertaining to emergency services. The governor shall serve as chairman of the council and the members thereof shall serve without compensation but shall be reimbursed for the reasonable and necessary expenses actually incurred in the performance of their duties.

§15-5-5. General powers of the governor.

The governor shall have general direction and control of the office of emergency services and shall be responsible for the carrying out of the provisions of this article and, in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency service functions within this state.

In performing his duties under this article, the governor is authorized to cooperate with the federal government, other states and private agencies in all matters pertaining to the provision of emergency services for this state and the nation.

In performing his duties under this article to effect its policy and purpose, the governor is further authorized and empowered:

(1) To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this article within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government.
(2) To prepare a comprehensive plan and program for the provision of emergency services in this state, such plan and program to be integrated into and coordinated with comparable plans of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of such plans and programs by the political subdivisions of this state, such plans to be integrated into and coordinated with the state plan and program to the fullest possible extent.

(3) In accordance with such state plan and program, to procure supplies and equipment, to institute training and public information programs, to take all other preparatory steps including the partial or full mobilization of emergency service organizations in advance of actual disaster and to insure the furnishing of adequately trained and equipped emergency service personnel in time of need.

(4) To make such studies and surveys of industries, resources and facilities in this state as may be necessary to ascertain the capabilities of the state for providing emergency services and to plan for the most efficient emergency use thereof.

(5) On behalf of the state, to enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of this state.

(6) To delegate the administrative authority vested in him under this article, to provide for the delegation or transfer or both of the authority vested in the director under the provisions of this article, to any other person as the governor in his discretion may direct, and to provide for the subdelegation of any such authority.

(7) To appoint, in cooperation with local authorities, metropolitan area directors when practicable.

(8) To cooperate with the president and the heads of the armed forces, the civil defense agency of the United States and other appropriate federal officers and agencies and with the officers and agencies of other states in matters pertaining to the civil defense of the state and nation, including the direction and control of (a) blackouts and practice blackouts,
air raid drills, mobilization of emergency service and civil defense forces and other tests and exercises; (b) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith; (c) the effective screening or extinguishing of all lights and lighting devices and appliances; (d) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services; (e) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior and subsequent to drills or attack; (f) public meetings or gatherings; and (g) the evacuation and reception of the civilian 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 parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:
(a) The east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East;

(b) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

(c) In the circle between the east and west wings of the state capitol;

(d) Upon the state-owned grounds upon which state Office Building No. 3, 1800 Washington Street, East, is located;

(e) Upon the state-owned grounds upon which state Office Building No. 4, 112 California Avenue, is located;

(f) In the state-owned parking garage at 212 California Avenue and upon the state-owned grounds upon which such parking garage is located;

(g) Upon the state-owned property at Michigan Avenue and Virginia Terrace;

(h) Upon any other property now or hereafter owned by the state and used for parking purposes in conjunction with the state capitol or state Office Buildings Nos. 3 and 4.

The commissioner is authorized to promulgate rules and regulations respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the aforementioned property of the state: Provided, That all parking spaces in the circle between the east and west wings of the state capitol shall at all times be kept available for parking by visitors at the capitol: Provided, however, That during sessions of the Legislature parking on the east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East, in the science and culture center parking lot and in the circle between the east and west wings of the capitol shall be subject to rules and regulations promulgated jointly by the speaker of the House of Delegates and the president of the Senate. Any person parking any vehicle contrary to the rules and regulations promulgated under authority of this section shall be subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense. In addi-
tion, the commissioner or the Legislature, as the case may be, may cause the removal at owner expense of any vehicle that is parked in violation of such rules and regulations. Magistrates in Kanawha County shall have jurisdiction of all such offenses.

The commissioner is authorized to employ such persons as may be necessary to enforce the parking rules and regulations promulgated under the provisions of this section.

CHAPTER 46
(Com. Sub. for S. B. 365—By Mr. Dav's)

[Passed March 11, 1978; is: 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 fire marshal in accordance with the qualifications approved by the state civil service commission as provided in article six, chapter twenty-nine of this code. He can be removed by the commission at any time for neglect of duty or other conduct unbecoming his office as provided in article six, chapter twenty-nine of this code.

2 (b) The state fire marshal, within policy established by the state fire commission, shall have all responsibility for the implementation of fire safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These responsibilities include, but are not limited to, the establishment and enforcement of fire safety practices throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments and critical analysis and evaluation of West Virginia's fire loss statistics for determination of problems and solutions.

3 (c) The state fire marshal may employ such technical, clerical, stenographic and other personnel and fix their compensation and may incur such expenses as may be necessary in the performance of the duties of his office within the appropriation therefor. Employees of the fire marshal's office shall be members of the state civil service system, and all appointments of the office shall be a part of the classified service under the civil service system.

4 Further, any individual who is employed to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first be re-
required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure and other criminal procedures relating to the powers granted to the state fire marshal pursuant to the provisions of this article.

(d) The state fire marshal and other personnel of the state fire marshal's office shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

§29-3-12. Powers and duties of state fire marshal.

(a) Enforcement of laws.—The state fire marshal shall enforce all laws of the state having to do with:

(1) Prevention of fire.

(2) The storage, sale and use of any explosive, combustible or other dangerous article in solid, flammable liquid or gas form.

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires.

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses for no more than two families.

(5) The suppression of arson.

(b) Assistance upon request.—Upon request, the state fire marshal shall immediately assist any chief of any recognized fire company or department.

(c) Enforcement of regulations.—The state fire marshal shall enforce the regulations promulgated by the state fire commission as authorized by section three of this article.

(d) Inspections generally.—The state fire marshal shall inspect all state, county and municipally owned institutions, all public and private schools, theaters,
churches and other places of public assembly as to fire 
exits and reasonable safety standards and report his 
findings and recommendations to the proper adminis-
trative heads.

(e) Right of entry.—The state fire marshal may at all 
reasonable hours enter any building or premises, other 
than dwelling houses, for the purpose of making an in-
spection, which he may deem necessary to be made under 
the provisions of this article.

(f) Investigations.—The state fire marshal may at any 
time investigate as to the origin or circumstances of any 
fire or explosion or attempt to cause fire or explosion 
occurring in the state. The state fire marshal shall have 
the authority at all times of the day or night, in per-
formance of the duties imposed by the provisions of this 
article, to investigate where any fires or attempt to cause 
fires shall have occurred, or which at the time may be 
burning. Notwithstanding the above provisions of this 
subsection, prior to entering any building or premises for 
the purposes of such investigation, the state fire marshal 
shall obtain a proper search warrant: Provided, That the 
same shall not be necessary where there is permissive 
waiver or the state fire marshal is an invitee of the 
individual having legal custody and control of the prop-
erty, building or premises to be searched.

(g) Testimony.—The state fire marshal, in making an 
inspection or investigation, when in his judgment such 
proceedings are necessary, may take the statements or 
testimony under oath of all persons who may be cognizant 
of any facts or have any knowledge about the matter 
to be examined and inquired into, and may have the 
statements or testimony reduced to writing; and shall 
transmit a copy of such statements or testimony so taken 
to the prosecuting attorney for the county wherein the 
fire or explosion or attempt to cause a fire or explosion 
ocurred. Notwithstanding the above, no person shall be 
compelled to testify or give any such statement under 
this subsection.

(h) Arrests; warrants; penalty.—When in their judg-
ment such examination as described in subsection (g) of this section discloses that the fire or explosion or attempt to cause a fire or explosion was of incendiary origin, the state fire marshal, any full-time deputy fire marshal, or any full-time assistant fire marshal are hereby authorized and empowered:

(1) To arrest the supposed incendiary anywhere within the confines of the state of West Virginia, or have him arrested, for any violation of the provisions of this article or of the arson-related offenses of article three, chapter, sixty-one of this code: Provided, That any and all persons so arrested shall be forthwith brought before the magistrate or circuit court.

(2) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute an arrest warrant when knowing or having reason to believe that anyone has committed an offense under any provision of this article or of the arson-related offenses of article three, chapter sixty-one of this code. Proper return shall be made on all arrest warrants before the tribunal having jurisdiction over such violation.

(3) To make complaint in writing before any court or officer having jurisdiction and obtain, serve and execute a warrant for the search of any premises that may possess evidence or unlawful contraband relating to violations of this article or of the arson-related offenses of article three, chapter sixty-one of this code. Proper return shall be made on all search warrants before the tribunal having jurisdiction over such violation.

(i) Witnesses and oaths.—The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him such papers as he may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him. False
swearing in any matter or proceeding aforesaid shall be
deemed perjury and shall be punishable as such.

(j) **Deputizing members of fire departments in this state.**—The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his department and who is properly qualified, to act as his assistant for the purpose of making inspections with the consent of the property owner or the person in control of such property and such investigations as may be directed by the state fire marshal, and the carrying out of such orders as may be prescribed by him, to enforce and make effective the provisions of this article and any and all regulations promulgated by the state fire commission under authority of this article.

(k) **Written report of examinations.**—The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him regarding any fire happening within their respective jurisdictions.

(l) **Report of losses by insurance companies.**—It shall be the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds fifteen hundred dollars, to report to the state fire marshal, upon forms furnished by him, such information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted, as in the judgment of the state fire marshal it is necessary for him to know. This report is in addition to any such information required by the state insurance commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the state fire marshal shall make a written report to the person requesting the same of the result of the examination made by him regarding the property.

(m) **Issuance of permits and licenses.**—The state fire
marshal is authorized to issue permits and licenses as required in this article.

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

(a) The fire marshal, any assistant fire marshal or any investigator under the authority of the fire marshal may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information shall include, but is not limited to:

1. Any policy in force;
2. Any application for a policy;
3. Premium payment records;
4. History of previous claims;
5. Material relating to the investigation of the loss, including statements of any person, proof of loss and any other relevant evidence.

(b) Any insurance company shall notify the fire marshal, if it has reason to believe, based on its investigation of a fire loss to real or personal property, that the fire was caused by other than accidental means. The company shall furnish the fire marshal with pertinent information acquired during its investigation and cooperate with the courts and administrative agencies of the state, and any official mentioned, or referred to, in subsection (a) of this section.

(c) In the absence of fraud, no insurance company or person who furnishes information on its behalf, shall be liable for any oral or written statement or any other action necessary to supply information required pursuant to this section.

(d) Any information furnished pursuant to this section
shall be held in confidence until such time as its release may be required pursuant to a criminal proceeding.

(e) Any official mentioned, or referred to, in subsection (a) of this section may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an 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 DRUGSTORES.

§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 held responsible for the quality of all drugs, chemicals and medicines they may sell or dispense, with the exception of those sold in the original retail package of the manufacturer, in which event the manufacturer shall be held responsible.

2 Except as provided in section twelve-b of this article, the following acts shall be prohibited: (1) The falsification of any label upon the immediate container, box and/or package containing a drug; (2) the substitution or the dispensing of a different drug in lieu of any drug prescribed in a prescription without the approval of the practitioner authorizing the original prescription: Provided, That this shall not be construed to interfere with the art of prescription compounding as practiced by the pharmacist in preparing more elegant preparations which do not alter the therapeutic properties of the prescription; (3) the filling or refilling of any prescription for a greater quantity of any drug or drug product than that prescribed in the original prescription without a written order or an oral order reduced to writing, or the refilling of a prescription without the verbal or written consent of the practitioner 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 selected by the manufacturer and placed upon a drug or drug
product, its container, label or wrapping at the time of packaging.

(2) "Generic name" means the official title of a drug or drug combination for which a new drug application, or an abbreviated new drug application, has been approved by the United States food and drug administration and is in effect.

(3) "Substitute" means to dispense without the prescriber’s express authorization a therapeutically equivalent generic drug product in the place of the drug ordered or prescribed.

(4) "Equivalent" means drugs or drug products which are the same amounts of identical active ingredients and same dosage form, and which will provide essentially the same therapeutic efficacy and toxicity when administered to an individual.

(5) "Practitioner" means a physician, osteopath, dentist, veterinarian, podiatrist, optometrist or any other person duly licensed to practice and to prescribe drugs under the laws of this state.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the exercise of his professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient: Provided, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient. Every drug prescription order shall contain an instruction on whether or not an equivalent generic name drug or drug product may be substituted.

If a written prescription is involved, the prescription or chart order form shall have two signature lines at opposite ends on the bottom of the form. Under the signature line at the left side shall be clearly printed or written the words "Brand Necessary" or words of similar purport which clearly indicate the physicians’ intent to prohibit substitution. Under the signature line at the right side shall be clearly printed the words "Generic Equivalent Permitted." A written prescription
order not in the form hereinabove prescribed shall be con-
strued as permitting the pharmacist to substitute an equivalent
generic name drug or drug product except where the prescrib-
ing practitioner has indicated in writing his intent that the
pharmacist not substitute an equivalent generic name drug
or drug product.

If an oral prescription order is involved, the prescribing
practitioner or his agent shall indicate to the pharmacist
whether or not an equivalent generic name drug or drug pro-
duct may be substituted. The pharmacist shall note the instruc-
tions on the file copy of the prescription or chart order form.

(c) No person may by trade rule, work rule, contract, or
in any other way prohibit, restrict, limit or attempt to pro-
hibit, restrict or limit the making of a generic name substitu-
tion under subsection (b) of this section. No employer or
his agent may use coercion or other means to interfere with
the professional judgment of the pharmacist in deciding
which generic name drugs or drug products shall be
stocked or substituted: Provided, That this section shall
not be construed to permit the pharmacist to generally refuse
to substitute less expensive therapeutically equivalent g-eneric
drugs for brand name drugs, and that any pharmacist so
refusing shall be subject to the penalties prescribed in section
twenty-two, article five, chapter thirty of this code.

(d) A pharmacist may substitute a drug under subsection
(b) of this section only where there will be a savings to the
buyer. Where substitution is proper under subsection (b), or
where the physician prescribes the drug by generic name,
the pharmacist shall, consistent with his professional judg-
ment, dispense the lowest retail cost, effective brand which is
in stock.

(e) All savings in the retail price of the prescription shall
be passed on to the purchaser; these savings shall be equal
to the difference between the retail price of the brand name
product and the customary and usual price of the g-eneric
product substituted therefor: Provided, That in no event shall
such savings be less than the difference in acquisition cost of
the brand name product prescribed and the acquisition cost of
the substituted product.
(f) Each pharmacy shall maintain a record of any substitution of an equivalent generic name drug product for a prescribed brand name drug product on the file copy of a written or oral prescription or chart order. Such record shall include the manufacturer and generic name of the drug product selected.

All drugs shall be labeled in accordance with the instructions of the practitioner.

Unless the physician directs otherwise, the prescription label on all drugs dispensed by the pharmacist shall indicate the generic name using abbreviations if necessary and the name of the manufacturer. The same notation will be made on the original prescription retained by the pharmacist.

(g) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

(1) Labeling products with the name of the original manufacturer and control number;

(2) Maintaining quality control standards equal to or greater than those of the United States food and drug administration;

(3) Marking products with identification code or monogram; and

(4) Labeling products with an expiration date.

(h) The West Virginia board of pharmacy shall establish by rule a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section, and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.
(i) No pharmacist shall substitute a generic named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia board of pharmacy pursuant to this article, or is found to be in violation of the requirements of the United States food and drug administration.

(j) Any pharmacist who substitutes any drug shall, either personally or through his agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

(k) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: “West Virginia law requires pharmacists to substitute a less expensive generic named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise.” The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia board of pharmacy.

(l) The West Virginia board of pharmacy shall promulgate rules and regulations setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section. Any person shall have the right to file a complaint with the West Virginia board of pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the board of pharmacy.

Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or co-
partnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy or drugstore.

(m) No pharmacist complying with the provisions of this section shall be liable in any way for the dispensing of a generic named therapeutically equivalent drug, substituted under the provisions of this section, unless the generic named therapeutically equivalent drug was incorrectly substituted.

In no event where the pharmacist substitutes a drug for the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury or death of any person occasioned by or arising from the use of the substitute drug unless the original drug was incorrectly prescribed.

Failure of a licensed physician to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the physician had reasonable cause to believe that the health of the patient required the use of a certain product and no other.

(n) This section shall take effect on the first day of July, one thousand nine hundred seventy-eight.

§30-5-22. Offenses; penalties.

1 Any person who shall violate any of the provisions of section three of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense, be fined not exceeding two hundred dollars, or confined in the county jail not to exceed six months, or both fined and imprisoned, in the discretion of the court, and each day such violation shall continue shall be deemed a separate offense.

Any person who violates any of the provisions of section twelve shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than fifty nor more than one hundred fifty dollars for each such offense.
13 Any person, except for the board of pharmacy or member
totherof 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 depart-
ment 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 contrary, the director may, at his discretion, designate in writing a representative to serve in his stead at the meetings and in the duties of all boards and commissions on which the director is designated as a member ex officio. Such appropriately designated representative or proxy may act with the full power and authority of the director in voting, acting upon matters concerning the public health and welfare and such other business as may properly be the duty of any such said board or commission, with any such representative serving as proxy for the director at his will and pleasure: Provided, That the provisions of this section shall not apply to the state board of health, the medical licensing board, the air pollution control commission or any other board, commission or body on which the director is designated by this code as chairman ex officio, secretary ex officio or any board, commission or body on which the director is designated by this code as being that person whose signature must appear on licenses, minutes or other documents necessary to carry out the intents and purposes of said board, commission or body.
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 to the state registrar of vital statistics as provided for in section sixteen of this article, that the child was born outside of the United States or its territories, then upon submission to the state registrar of vital statistics of evidence as to the child's birthdate and birthplace provided by the original birth certificate, or a certified copy, extract, or translation thereof or by any other essentially equivalent document including, but not limited to, the records of the United States immigration and naturalization service or of the United State's department of state, the state registrar of vital statistics shall make and file a new birth certificate for the child. The new birth certificate shall include the actual place and date of birth, the child's name and parentage as ordered in the decree of adoption and any other necessary facts as required by the state registrar.
CHAPTER 50
(6. 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 hypothyroidism, genetic defects affecting body metabolism, are usually associated with mental retardation. Laboratory tests are readily available to aid in the detection of these diseases and the hazards to health of those suffering thereof may be lessened or prevented by early detection and treatment. Damage from these diseases, if untreated in the early months of life, is usually rapid and not appreciably 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 establish and carry out a program designed to combat
mental retardation in our state’s population due to phenylketonuria and hypothyroidism, and may adopt reasonable rules and regulations necessary to carry out such a program. The department of health shall establish and maintain facilities at its state hygienic laboratory for testing specimens for the detection of phenylketonuria and hypothyroidism. Tests shall be made by such laboratory of specimens upon request by physicians, hospital medical personnel and other individuals attending newborn infants. The state department of health is authorized to establish additional laboratories throughout the state to perform tests for the detection of phenylketonuria and hypothyroidism.

§16-22-3. Tests for phenylketonuria and hypothyroidism; reports; assistance to afflicted children.

The physician attending a newborn child or any person attending a newborn child not under the care of a physician shall cause to be made a test for phenylketonuria and hypothyroidism approved by the state department of health. Any test found positive for phenylketonuria or hypothyroidism shall be promptly reported to the state department of health by the director of the laboratory performing such test.

The state department of health, in cooperation with other state departments and agencies, and with attending physicians, is authorized to provide medical, dietary and related assistance to children determined to be afflicted with phenylketonuria or hypothyroidism.

§16-22-4. Penalties for violating provisions of article.

Any person violating the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than fifty dollars. Violation of each such provision shall be considered a separate offense.
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 establish and implement programs for early detection of diseases as the director may determine, including, but not limited to, high blood pressure, diabetes, and if possible, water testing. The board of health may promulgate reasonable rules and regulations necessary to carry out such programs. To this end, the director is hereby authorized to convert and utilize any mobile testing facilities presently within the department of health for such programs and in such areas of this state as the director may determine. The director may establish and maintain adequate testing facilities for the detection of such diseases in state hygienic laboratories and water testing facilities as the director finds is necessary to carry out the legislative 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 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 be in lieu of all other license, income, excise, special or franchise taxes of this state, and no county or municipality or other political subdivision of this state shall be empowered to levy or impose any license, income, pari-mutuel, excise, special or franchise tax on any racing association engaged in the business of conducting a horse or dog race meeting at which horse or dog races are run for purses under the jurisdiction of and being licensed by the racing commission, or on the operation or maintenance of the pari-mutuel system of wagering, or on the sale of any commodity during a horse or dog race meeting at which horse or dog races are run, or at any such horse or dog racetrack nor shall there be, hereafter, any imposition of tax pursuant to articles twelve, thirteen or fifteen of chapter eleven of this code on the income or receipts of owners, trainers or jockeys directly arising from their services which are essential to the effective conduct of a horse or dog racing meeting: Provided, That the foregoing provisions of this section shall in no way affect, abridge or abolish the authority of a municipality to impose the license tax authorized by the provisions of section eight, article thirteen, 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, chap­
ter thirty-three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to auto­
mobile 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 liability insurance policy unless such nonrenewal is preceded by at least forty-five days of advance notice to the named insured of such insurer's election not to renew such policy: Provided, That subject to this section, nothing contained in this article shall be construed so as to prevent an insurer from refusing to issue an automobile liability policy upon application to such insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew such a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan: Provided, however, That the failure by an insurer to renew an outstanding automobile liability insurance policy which has been in existence for two consecutive years or longer constitutes a cancellation of such policy and is subject to hearing and review as provided by section five of this article.

CHAPTER 56

(5. 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 a domestic insurer in receivership or placing a foreign insurer in ancillary receivership for rehabilitation or liquidation, pursuant to this article, all policyholders, beneficiaries and insureds of such insurer, and the West Virginia insurance guaranty association, shall be preferred creditors of said insurer with respect to claims arising from and within the coverages of and not in excess of the applicable limits of insurance policies and contracts issued by the company, liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of the West Virginia insurance guaranty association and any similar organization in another state. With the exception of costs of administration of said receivership, liens, judgments obtained prior to initiation of delinquency proceedings, and secured creditors claims, no claim of a general creditor shall be preferred over that of a policyholder, beneficiary and insured of an insurer in receivership or that of the West Virginia insurance guaranty association.

(b) (1) Within one hundred twenty days of a final determination of insolvency of an insurance company by the circuit court, the commissioner shall make ap-
application to the court for approval of a proposal to disperse assets out of such company's marshaled assets, from time to time as such assets become available, to the West Virginia insurance guaranty association including any assets received from any entity or person performing a similar function in another state. The West Virginia insurance guaranty association and any entity or person performing a similar function in other states shall hereinafter be referred to collectively as the associations.

(2) Such proposal shall at least include provisions for:

(A) Reserving amounts for the payment of expenses of administration and of claims falling within the priorities established in the Uniform Insurers Liquidation Act but only with respect to such priorities higher than that of the associations;

(B) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available;

(C) Equitable allocation of disbursements to each of the associations entitled thereto;

(D) The securing by the commissioner from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the commissioner such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in section twenty-seven of this article. No bond shall be required of any such association; and

(E) A full report to be made by the association to the commissioner accounting for all assets so dispersed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct.

(3) The commissioner's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert
a claim against the commissioner, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(4) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States mail, first class postage prepaid, at least thirty days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided that the commissioner's proposal complies with paragraphs (A) and (B), subdivision (2) hereof.

§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-10. Additional 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.

A group policy or group subscriber contract which provides hospital, surgical or major medical expense insurance, or any combination of these coverages, on an expense incurred basis, but not a policy which provides benefits for specific diseases or for accidental injuries only, shall provide that an employee or member whose insurance under the group policy or contract has been terminated for any reason, including discontinuance of the group policy in its entirety or of an insured class, who has been continuously insured under the group policy, or under any group policy providing similar benefits which it replaces, for at least three months immediately prior to termination, shall be entitled to have issued to him by the insurer a converted policy of health insurance. An employee or member shall not be entitled to have a converted policy issued to him if termination of his insurance under the group policy occurred because he failed to pay any required contribution, or the discontinued group coverage was replaced by similar group coverage within thirty-one days.

§33-16A-2. Issuance of converted policy.

Issuance of a converted policy shall be subject to the following conditions:

(a) Written application for the converted policy shall be made and the first premium paid to the insurer not later than thirty-one days after termination of the group policy or contract.

(b) The converted policy shall be issued without evidence of insurability.
(c) The initial premium for the converted policy for the first twelve months and subsequent renewal premiums shall be determined in accordance with premium rates applicable to individually underwritten standard risks, to the age and class of risk of each person to be covered under the converted policy and to the type and amount of insurance provided. The experience under converted policies shall not be an acceptable basis for establishing rates for converted policies.

If an insurer experiences or incurs losses for a period of two years on conversion policies which exceed earned premiums by more than twenty percent, the insurer may file with the commissioner amended renewal rates for the subsequent year, which will produce a loss ratio of not less than one hundred twenty percent.

Conditions pertaining to health shall not be an acceptable basis for classification for the purposes of this section. The frequency of premium payment shall be the frequency customarily required by the insurer for the policy form and plan selected: Provided, That the insurer shall not require premium payments less frequently than quarterly.

§33-16A-3. Effective date of policy.

The effective date of the converted policy shall be the day following the termination of insurance under the group policy.


The converted policy shall cover the employee or member and his dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent.

§33-16A-5. Persons for whom coverage not required.

The insurer shall not be required to issue a converted policy covering any person if such person is or could be covered by medicare (Title XVIII of the United States Social Security Act as supplemented by the Social Security Amendments of 1965 or as later amended or superseded). Furthermore, the
insurer shall not be required to issue a converted policy covering any person if:

(a) (1) Such person is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program; or

(2) Similar benefits are provided to such person, pursuant to or in accordance with the requirements of any state or federal law; and

(b) The benefits provided under the sources referred to in (1) above for such person or benefits provided under the sources referred to in (2) above for such person, together with the benefits provided by the converted policy, would result in overinsurance according to the insurer's standards. The insurer's standards must bear some reasonable relationship to actual health care costs in the area in which the insured lives at the time of conversion and must be filed with the commissioner prior to their use in denying coverage.

§33-16A-6. Inquiries by insurer.

A converted policy may include a provision whereby the insurer may request information in advance of any premium due date of such policy of any person covered thereunder as to whether (i) he is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan or by any other plan or program, (ii) he is covered for similar benefits under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis, or (iii) similar benefits are provided for or available to such person, pursuant to or in accordance with the requirements of any state or federal law. The converted policy may provide that the insurer may refuse to renew the policy or the coverage of any person insured thereunder for the following reasons only:

(a) Either the benefits provided under the sources referred to in (i) and (ii) above for such person or benefits provided
or available under the sources referred to in (iii) above for such person, together with the benefits provided by the converted policy, would result in overinsurance according to the insurer's standards on file with the commissioner or the converted policyholder fails to provide the requested information;

(b) Fraud or material misrepresentation in applying for any benefits under the converted policy;

(c) Eligibility of the insured person for coverage under medicare (Title XVIII of the United States Social Security Act as supplemented by the Social Security Amendments of 1965 or as later amended or superseded) or under any other state or federal law providing for benefits similar to those provided by the converted policy;

(d) Other reasons approved by the commissioner.

§33-16A-7. Limits of coverage.

An insurer shall not be required to issue a converted policy which provides benefits in excess of those provided under the group policy from which conversion is made.

§33-16A-8. Preexisting conditions; reduction of benefits.

The converted policy shall not exclude a preexisting condition not excluded by the group policy. However, the converted policy may provide that any hospital, surgical or medical benefits payable thereunder may be reduced by the amount of any such benefits payable under the group policy after the termination of the individual's insurance thereunder. The converted policy may also include provisions so that during the first policy year the benefits payable under the converted policy, together with the benefits payable under the group policy, shall not exceed those that would have been payable had the individual's insurance under the group policy remained in force and effect.


If the group insurance policy from which conversion is made insures the employee or member for basic hospital or surgical expense insurance, the employee or member shall be entitled to obtain a converted policy providing, at his option,
coverage on an expense incurred basis under any one of the plans meeting the following requirements:

**Plan A**

(a) Hospital room and board daily expense benefits in a maximum dollar amount approximating the average semi-private rate charged in metropolitan areas of this state, for a maximum duration of seventy days;

(b) Miscellaneous hospital expense benefits of a maximum amount of ten times the hospital room and board daily expense benefits; and

(c) Surgical operation expense benefits according to a surgical schedule consistent with those customarily offered by the insurer under group or individual health insurance policies and providing a maximum benefit of eight hundred dollars; or

**Plan B**

(a) Hospital room and board daily expense benefits in a maximum dollar amount equal to seventy-five percent of the maximum dollar amount determined for Plan A, for a maximum duration of seventy days;

(b) Miscellaneous hospital expense benefits of a maximum amount of ten times the hospital room and board daily expense benefits; and

(c) Surgical operation expense benefits according to a surgical schedule consistent with those customarily offered by the insurer under group or individual health insurance policies and providing a maximum benefit of six hundred dollars; or

**Plan C**

(a) Hospital room and board daily expense benefits in a maximum dollar amount equal to fifty percent of the maximum dollar amount determined for Plan A, for a maximum duration of seventy days;

(b) Miscellaneous hospital benefits of a maximum amount of ten times the hospital room and board daily expense benefits; and

(c) Surgical operation expense benefits according to a
surgical schedule consistent with those customarily offered by the insurer under group or individual health insurance policies and providing a maximum benefit of four hundred dollars.

The maximum dollar amounts in Plan A shall be determined by the commissioner and may be redetermined by him from time to time as to converted policies issued subsequent to such redetermination. Such redetermination shall not be made more often than once in three years. The maximum dollar amounts in Plans A, B and C shall be rounded to the nearest multiple of ten dollars.

§33-16A-10. Additional coverage.

If the group insurance policy from which conversion is made insures the employee or member for major medical expense insurance, the employee or member shall be entitled to obtain a converted policy providing catastrophic or major medical coverage under a plan meeting the following requirements:

(a) A maximum benefit at least equal to either, at the option of the insurer, (1) or (2) below:

(1) The smaller of the following amounts:

(A) The maximum benefit provided under the group policy.

(B) A maximum payment of two hundred fifty thousand dollars per covered person for all covered medical expenses incurred during the covered person's lifetime.

(2) The smaller of the following amounts:

(A) The maximum benefit provided under the group policy.

(B) A maximum payment of two hundred fifty thousand dollars for each unrelated injury or sickness.

(b) Payment of benefits at the rate of eighty percent of covered medical expenses which are in excess of the deductible, until twenty percent of such expenses in a benefit period reaches one thousand dollars, after which benefits will be paid at the rate of one hundred percent during the remainder of such benefit period. Payment of benefits for outpatient
treatment of mental illness, if provided in the converted policy, may be at a lesser rate but not less than fifty percent.

(c) A deductible for each benefit period which, at the option of the insurer, shall be (1) the sum of the benefits deductible and one hundred dollars, or (2) the corresponding deductible in the group policy. The term “benefits deductible,” as used herein, means the value of any benefits provided on an expense incurred basis which are provided with respect to covered medical expenses by any other hospital, surgical, or medical insurance policy or hospital or medical service subscriber contract or medical practice or other prepayment plan, or any other plan or program whether on an insured or uninsured basis, or in accordance with the requirements of any state or federal law and, if pursuant to section eleven of this article, the converted policy provides both basic hospital or surgical coverage and major medical coverage, the value of such basic benefits.

If the maximum benefit is determined by (a) (2) above, the insurer may require that the deductible be satisfied during a period of not less than three months if the deductible is one hundred dollars or less, and not less than six months if the deductible exceeds one hundred dollars.

(d) The benefit period shall be each calendar year when the maximum benefit is determined by (a) (1) above or twenty-four months when the maximum benefit is determined by (a) (2) above.

(e) The term “covered medical expenses,” as used above, shall include at least, in the case of hospital room and board charges, the lesser of the dollar amount in Plan A and the average semiprivate room and board rate for the hospital in which the individual is confined and twice such amount for charges in an intensive care unit. Any surgical schedule shall be consistent with those customarily offered by the insurer under group or individual health insurance policies and must provide at least a one thousand two hundred dollar maximum benefit.


The conversion privilege required by this article shall, if
the group insurance policy insures the employee or member for basic hospital or surgical expense insurance as well as major medical expense insurance, make available the plans of benefits set forth in sections nine and ten of this article. At the option of the insurer, such plans or benefits may be provided under one policy.

The insurer may also, in lieu of the plans of benefits set forth in sections nine and ten of this article, provide a policy of comprehensive medical expense benefits without first dollar coverage. Said policy shall conform to the requirements of section ten of this article: Provided, That an insurer electing to provide such a policy shall make available a low deductible option, not to exceed one hundred dollars, a high deductible option between five hundred and one thousand dollars, and a third deductible option midway between the high and low deductible options.

The insurer may, at its option, also offer alternative plans for group health conversion in addition to those required by this article.

§33-16A-12. Coverage following retirement.

In the event coverage would be continued under the group policy on an employee following his retirement, but prior to the time he is or could be covered by medicare, he may elect, in lieu of such continuation of group insurance, to have the same conversion rights as would apply had his insurance terminated at retirement by reason of termination of employment or membership.

The converted policy may provide for reduction of coverage on any person upon his eligibility for coverage under medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy.

§33-16A-13. Other conversion privileges.

Subject to the conditions set forth in the previous sections of this article, the conversion privilege shall also be available (a) to the surviving spouse, if any, at the death of the employee or member, with respect to the spouse and such children whose coverage under the group policy terminates by reason of such death, otherwise to each surviving child whose coverage under the group policy terminates by reason of such
death, or, if the group policy provides for continuation of dependents coverage following the employee’s or member’s death, at the end of such continuation, (b) to the spouse of the employee or member upon termination of coverage of the spouse, while the employee or member remains insured under the group policy, by reason of ceasing to be a qualified family member under the group policy, with respect to the spouse and such children whose coverage under the group policy terminates at the same time, or (c) to a child solely with respect to himself upon termination of his coverage by reason of ceasing to be a qualified family member under the group policy, if a conversion privilege is not otherwise provided above with respect to such termination.

§33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.

If the benefit levels required in section nine of this article exceed the benefit levels provided under the group policy, the conversion policy may offer benefits which are substantially similar to those provided under the group policy in lieu of those required in section nine.

The insurer may elect to provide group insurance coverage in lieu of the issuance of a converted individual policy.

A notification of the conversion privilege shall be included in each certificate of coverage.

A converted policy which is delivered outside this state must be on a form which could be delivered in such other jurisdiction as a converted policy had the group policy been 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.]
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.
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 appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the
current requirements or demands, and it further be deter-
mined by the county treasurer that the available interest rate
offered by an acceptable depository in such treasurer's county
be less than the interest rate, net of administrative fees re-
ferred to in article six, chapter twelve of this code, offered it
through the state board of investments, the county treasurer
may, with the approval in writing of each fiscal body whose
funds are involved, make such funds available to the state
board of investments for investment in accordance with the
provisions of said article six, chapter twelve of the code.

Any income earned on such investment shall be allocated by
such treasurer to the fiscal body whose funds were made
available, such allocation to be made in accordance with the
accounting and allocation principles established by the board
of investments.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22a. Investment of municipal funds.

All municipal funds the investment of which is not governed
by other provisions of this code and not required for the pay-
ment of current obligations and not otherwise prohibited, may
be:

(1) Made available by the municipal treasurer to the state
board of investments for investment in accordance with the
provisions of article six, chapter twelve of this code, if it be
determined by such municipal treasurer that the available in-
terest rate offered by an acceptable depository in such treasur-
er's municipality be less than the interest rate, net of adminis-
trative fees referred to in article six, chapter twelve of this code,
offered it through the state board of investments; or

(2) Invested by such treasurer in the following classes of
securities and accounts which securities and accounts mature
on such dates as will make available such amount of cash
as is required:

(a) Obligations of the United States or any agency thereof,
which are guaranteed by the United States or for which the
full faith and credit of the United States is pledged for the
payment of principal and interest, or any obligation of an
agency of the United States designated in section nine, article
six, chapter twelve of this code.

(b) Certificates of deposit secured by (1) obligations as
listed in the preceding paragraph of this subdivision, (2)
general obligation or revenue bonds of the state of West Vir-
ginia, (3) general obligation bonds of any other state, (4)
general obligation bonds of any county in this state or of any
county board of education in this state, or (5) general obliga-
tion bonds of any municipality in this state.

(c) Interest bearing savings accounts in banking institu-
tions, the accounts of which are insured by the federal deposit
insurance corporation, or in federal savings and loan associa-
tions, the accounts of which are insured by the federal savings
and loan insurance corporation, or in building and loan associa-
tions, the accounts of which are insured by the federal savings
and loan insurance corporation: **Provided,** That an investment
in any such savings account in excess of the amount insured
by the federal deposit insurance corporation or the federal
savings and loan insurance corporation, as the case may be,
shall not be made unless such banking institution, federal
savings and loan association or building and loan association
provides adequate bond or other adequate security for the
amount of the proposed municipal investment in excess of such
insurance coverage, the adequacy of any such bond or other
security to be determined by the treasurer of such munic-
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.
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 collection, disbursement, management and investment of public moneys in the state treasury will benefit the citizens of this state by reducing the costs of government and providing sources of increased revenue without the necessity of increased taxation; and to this end, the state board of investments and the state treasurer should be given the authority to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and 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 national banks in this state which shall serve as depositories for all state funds placed in demand deposits.  Any such state or national bank shall, upon request to such board, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter:  Provided, That notwithstanding any provision of this article to the contrary, no state funds may be deposited in any bank which has been in existence over a period of five years which does not have a
loan to deposit ratio of fifty percent or more and twenty-five percent of its loans shall be in single or multi-family residential units, excluding mobile homes.

The state treasurer shall apportion demand deposits among such depositories, giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby: Provided, That on and after the first day of July, one thousand nine hundred seventy-eight, the board shall select depositories for demand deposits through competitive bidding by banks in this state: Provided, however, That demand funds in both disbursements and receipts shall be proportionately distributed among the following categories of such depositories, based upon the total assets of such depository: (a) Depositories whose total assets are not greater than twenty-five million dollars, (b) depositories whose total assets are greater than twenty-five million dollars but not greater than fifty million dollars, or (c) depositories whose total assets are greater than fifty million dollars. The board shall promulgate rules and regulations prescribing the procedures and criteria for such bidding and selection. It shall, in its invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as it considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost. The board shall provide for and invite bids on separate or combined classifications of services including, but not limited to depositories for receipts, depositories for disbursements, and depositories for moneys to be invested by the state: Provided further, That the depositories for such demand deposits shall be determined by the board through competitive bidding separately for each category of depositories created in this section.

The amount of money needed for current operational purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury in cash or in demand deposits with banks designated as depositories in accordance with the provisions of this section.
§12-1-3. Depositories for interest earning deposits.

Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the board of investments, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. For purposes of this article, the term “interest earning deposits” includes certificates of deposit. The board of investments, acting through the treasurer, shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of such deposits, all in accordance with the provisions of article six of this chapter: Provided, That state or federal savings and loan associations insured by an agency of the federal government shall be eligible for such deposits not in excess of forty thousand dollars: Provided, however, That notwithstanding any provision of this article to the contrary, no such interest earning deposits may be deposited in any depository which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and twenty-five percent of its loans shall be in single or multi-family residential units, excluding mobile homes.

§12-1-4. Bonds to be given by depositaries.

Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government, the board of investments shall require such depository to give a collaterally secured bond, in the amount of not less than ten thousand dollars, payable to the state of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with such depository, or of any accrued interest on deposits. Such bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the board of investments. The collateral security for such bond shall consist of bonds of the United States, of the
federal land banks, of the federal home loan banks, or bonds of the state of West Virginia or of any county, district or municipality of this state, or other bonds or securities approved by the board of investments. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of such bond may be permitted with the approval in writing of the treasurer who shall report such withdrawal or substitution at the next meeting of the board. All depository bonds shall be recorded by the treasurer in a book kept in his office for the purpose, and a copy of such record, certified by him, shall be prima facie evidence of the execution and contents of such bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the state of West Virginia, and in the event said securities are delivered to the treasurer, he shall furnish a receipt therefor to the owner thereof. The treasurer and his bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of said securities by the treasurer or any of his employees, and for the loss thereof due to his negligence or the negligence of any of his employees; and such securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of such securities with one or more banking institutions within or outside the state of West Virginia and may contract with any such institution for safekeeping and exchange of any such collateral securities, and may prescribe the rules and regulations for handling and protecting the same, subject to the approval of the board of investments.

§12-1-5. Limitation on amount of deposits.

The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall not exceed ninety percent of the value of collateral pledged on the collaterally secured bond given by such depository. The value of such collateral shall be determined 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 deposits in excess of the amount permitted by application of the preceding section or in an amount greater than its paid up capital stock and surplus.

§12-1-7. Rules and regulations of the board of investments; depositors' agreements.

1 In addition to rules and regulations specially authorized in this article, the board of investments is generally authorized to promulgate any rules and regulations it deems necessary to protect the interests of the state, its depositories and taxpayers. All rules and regulations promulgated by the board shall be subject to the provisions of article three, chapter twenty-nine-a of this code. Any rules and regulations previously established by the board of public works pursuant to this article shall remain in effect until amended, superseded or rescinded by the board of investments.

The board of investments is also authorized to enter into any depositors' agreements for the purpose of reorganizing or rehabilitating any depository in which state funds are deposited, and for the purpose of transferring the assets, in whole or in part, of any such depository to any other lawful depository when, in the judgment of the board, the interests of the state will be promoted thereby, and upon condition that no right 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 designation as a state depository if any member of the board of investments, or a spouse, child or parent of such member, is an officer, director or employee thereof, or owns, either in his or their own name or beneficially, an interest in such depository. A member of the board shall disclose such circumstance, if any, in the sworn statement required under the provisions of 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 treasurer may transfer funds by check or bank wire when-
ever actually needed to pay the warrants drawn by the auditor
upon the treasury, to equalize deposits or to provide funds to
purchase investments for the account of the state. All checks
drawn for transfer of funds shall have printed or stamped on
the face of same "for transfer of funds only," or if the trans-
fer is made by wire, the bank wire and supporting documents
shall be marked "for transfer of funds only."

§12-1-10. Treasurer to keep accounts with depositories; settlements
with depositories; reports showing depository balances.

The treasurer shall keep in his office a record showing the
account of each depository, under which account entry shall
be made showing the amount and date of each deposit, the
amount and date of each withdrawal, and the balance on
deposit. He shall cause his account with each depository to
be settled at the end of every quarter of the year and the
balance in such depository to the credit of the treasury to be
carried forward to the account of the next quarter.

The treasurer shall furnish the board of investments and
the president and minority leader of the Senate and the
speaker and minority leader of the House of Delegates, not
later than the tenth day of each month, a statement showing
the daily balances for each day on the last day of the preceding
month in each state depository.

§12-1-11. Reports by depositories to board of investments; dis-
continuance of depositories.

Each depository of state funds shall at the end of each
quarter cause its president or cashier to report to the board of
investments the amount of state funds on deposit and such
report shall be verified by the affidavit of the officer making
it. The form and contents of such report shall be prescribed
by the board. For the failure to file such report, or for other
good cause, the board may discontinue any depository as an
eligible depository and cause all state funds to be withdrawn
from any depository or depositories so discontinued. When a
depository is discontinued, the board of investments shall im-
mediately notify such depository of its discontinuance, and shall
also issue its order to the treasurer, directing him immediately
to withdraw by current checks or by transfer to another de-
pository or depositories the full amount of the deposits held by
any depository so discontinued. After such discontinuance it
shall be unlawful for the treasurer to deposit any state funds in
any depository so discontinued until such time as the deposi-
tory may be reinstated to eligibility.

§12-1-12. When treasurer may make funds available to the board
of investments; depositories outside the state.

When the funds in the treasury exceed the amount needed
for current operational purposes as determined by the trea-
surer, he may make all or part of such excess available for
investment by the board of investments, which shall invest
the same for the benefit of the general revenue fund.

Whenever the funds in the treasury exceed the amount for
which depositories within the state have qualified, or the
depositories within the state which have qualified are unwill-
ing to receive larger deposits, the board of investments may
designate depositories outside the state, demand deposits be-
ing bid for in the same manner as required by depositories
within the state, and when such depositories outside the
state have qualified by giving the bond prescribed in section
four of this article, the state treasurer shall deposit funds there-
in in like manner as funds are deposited in depositories within
the state under this article.

The treasurer may transfer funds to banks outside the
state for investment purposes or to meet obligations to paying
agents outside the state and such transfers although not con-
sidered to be deposits for purposes of this section, must meet
the same bond requirements as set forth in this article for such
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 govern-
ing 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.

All persons, firms and corporations shall promptly pay all taxes and other amounts due from them to the state, or to any political subdivision, official, department, board, commission or other collecting agency thereof authorized by law to collect the same, in money, United States currency or by check, bank draft, certified check, cashier's check, post-office money order, or express money order payable and delivered to the official, department, board, commission or collecting agency thereof authorized by law to collect the same and having the account upon which such taxes or amounts are chargeable against the payer thereof. The duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies having the account on which taxes or other amounts are chargeable against the payer thereof and authorized by law to collect the same, and their respective agents, deputies, assistants and employees shall in no case be the agent of the payer in and about the collection of such taxes or other amounts, but shall at all times and under all circumstances be the agent of the state, its political subdivision, official, department, board, commission or collecting agency having the account on which such taxes or amounts are chargeable against the payer thereof and 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.

All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit promptly with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The treasurer may promulgate rules and regulations governing the procedure for such deposits. When so paid, such moneys shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the state,
and shall not be used for any purpose whatsoever unless and until authorized and directed by the Legislature, except the following funds:

(a) All moneys received out of appropriations made by the Congress of the United States;

(b) All funds derived from the sale of farm and dairy products from farms operated by any agency of state government other than the farm management commission;

(c) All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;

(d) All fees and funds collected at state educational institutions for student activities;

(e) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(f) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(g) All insurance collected on account of losses by fire and refunds;

(h) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications and licenses under article nine, chapter thirty-one of this code, and all funds and moneys payable to or received by the natural resources commission of West Virginia;

(j) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

All moneys, excepted as aforesaid, shall be paid into the
state treasury in the same manner as collections not so
excepted, and shall be carried in separate accounts to be
used and expended only for the purposes for which the same
are authorized to be collected by law. The gross amount
collected in all cases shall be paid into the state treasury,
and commissions, costs and expenses of collection authorized
by general law to be paid out of the gross collection are
hereby authorized to be paid out of the moneys collected
and paid into the state treasury in the same manner as other
payments are made from the state treasury.

The official or employee making such deposits in the state
treasury shall prepare such deposit lists in such manner and
upon such report forms as may be prescribed by the treasurer.
The original of this report shall accompany the deposit to
the treasurer's office. Certified or receipted copies shall
be immediately forwarded by the official or employee making
such deposit to the state auditor and to the commissioner of
finance and administration, and a copy shall be kept by the
official or employee making the report and shall become a
part of his permanent record.

§12-2-3. Deposit of moneys by treasurer; deposit report to be sent
by treasurer to auditor and director of budget.

The treasurer shall promptly transmit or cause to be trans-
mitted such deposits, together with a certificate of deposit,
as soon as practicable to the depository in which he desires to
make the deposit, and shall retain and record the deposit
lists. A copy of each deposit report received by the treasurer
shall be sent to the auditor and the director of the budget
daily.

§12-2-4. Duty of depositories.

Immediately upon the receipt of such deposit, it shall be
the duty of the depository to credit the state treasurer with
the amount of the deposit, to date and sign the certificate of
deposit by some legally constituted official of the depository
and promptly transmit such certificate to the state treasurer,
who shall immediately transmit a copy thereof to the state
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.

Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he shall find to be justly due from the state, if payment thereof be authorized by law, and if there be an appropriation not exhausted or expired out of which it is properly payable, he shall issue his warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation the same is to be charged. On the presentation of such warrant to the treasurer, he shall ascertain whether the same has been drawn in pursuance of an appropriation made by law, and if he finds it to be so, he shall in that case, but not otherwise, endorse his check upon such warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified; or he may issue a bank wire in payment of such warrant. If such check shall not be presented for payment within three years after it is drawn, it shall then be the duty of the treasurer to credit it to the depository on which it was drawn, to credit the state fund with the amount, and immediately notify the auditor to make corresponding entries on his books. No state depository shall pay a check unless it is presented within six months after it is drawn and every check shall bear upon its face the words, "Void, unless presented for payment within six months." All claims required by law to be allowed by any court, and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the same affixed by the clerk of such court to his certificate of its allowance; and no such claim shall be audited and paid by the auditor unless the seal of such court be thereto attached as aforesaid. No tax or fee shall be charged by the clerk for affixing his seal to the certificate referred to in this section.
§12-3-1a. Payment by deposit in bank account.

The treasurer may pay any person claiming to receive money from the treasury by deposit to such person’s account in any bank or other financial institution within the state authorized to receive deposits, if such person furnishes to the treasurer written authorization of such method of payment. The treasurer shall prescribe the form of such authorization. This section shall not be construed to require the treasurer to utilize the method of payment authorized by this section; but such method is authorized only as an alternative method of payment to persons claiming to receive money from the treasury. A written authorization furnished pursuant to this section may be revoked by written notice furnished to the treasurer.

§12-3-4. No check to be drawn on depository having insufficient funds; necessity of warrant and check or bank wire.

The treasurer shall draw no check on any depository unless there be money enough therein to the credit of the treasury to pay such check when duly presented for payment. No depository holding money to the credit of the treasury shall pay out the same, or any part thereof, except upon a check of the treasurer endorsed on a warrant of the auditor authorizing such check or a duly authorized bank wire drawn in place of 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.

The treasurer shall keep in his office separate accounts with each depository, and also a general account of receipts and disbursements for the state, and when money is paid into the treasury, it shall be charged to the proper depository and credited to such general account. The auditor shall keep in his office separate accounts of the particular heads or sources...
of revenue, and a general account with the treasurer, beside
such individual accounts with officers and persons as may be
necessary, and shall charge every sum of money received for
the state as aforesaid to the treasurer's account, and credit it
under the particular head of revenue to which it properly
belongs, distinguishing especially in distinct accounts the re-
cceipts on account of the capital of the school fund and those
on account of the income of said fund subject to annual dis-
tribution. The auditor shall certify annually to the commis-
sioner of finance and administration the condition of the state
revenues and the several funds of the state. Such certification
shall be used by the commissioner in the preparation of a
tentative state budget as required of him by article two, chap-
ter five-a of this code.

§12-4-3. Accounts of appropriations.

The auditor and treasurer shall each keep in books, to
be used for that purpose exclusively, an account of every
appropriation made by law, and of the several sums drawn
thereon, so that such books may show at all times the balance
undrawn on each appropriation. The account so kept shall
be compared every quarter and the errors, if any, corrected.

§12-4-11. Exceptional items fund.

(a) There is hereby created in the treasurer's office a
special fund known as the "exceptional items fund" to be
administered by the treasurer pursuant to the provisions of
this section and rules and regulations established thereunder.

(b) The treasurer is authorized to make transfers to and
from the exceptional items fund for the purpose of clearing
irreconcilable items carried forward on his accounts with
state depositories: Provided, That no transfer may be made
as to any irreconcilable item in excess of fifty dollars without
the approval of the state auditor.

(c) The treasurer and auditor shall jointly promulgate
rules and regulations establishing procedures and conditions
for issuance of substitute checks to payees in cases where
the checks originally issued are erroneous, or have been
lost, mutilated, destroyed, stolen or forged. Any disbursements
pursuant to such rules and regulations shall be made from the
exceptional items fund. Any moneys received by the state
from persons responsible for wrongfully cashing such originally
issued checks shall be deposited in such fund.

§12-4-12. Treasurer authorized to provide check-cashing service;
establishment and audit of cash funds.

The treasurer may provide a check-cashing service at his
office in the capitol building and may charge fees for such
service for each check cashed and for each check returned
for insufficient funds. For this purpose, he may establish
from receipts in the treasury not more than two cash funds
each in an initial amount not to exceed fifty thousand dollars.
He shall designate certain employees in his office who are
to provide the service and have charge of such funds, and
may require such employees to be bonded either individually
or by blanket bonds. The cost of such bond or bonds shall
be paid out of the treasurer's current expense appropriation.

The fees received for such service shall be deposited in
the cash funds and itemized accounts of such receipts shall
be maintained. Any check determined by the treasurer to be
uncollectible shall be charged against the fund from which
it was cashed. The legislative auditor shall, at least annually,
but may at any time, audit the cash funds and all accounts
and records relating to the service provided pursuant to this
section. If the amount of either cash fund (after charges for
uncollectible checks) exceeds fifty thousand dollars at the
conclusion of any audit, the treasurer shall transfer such
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.

The treasurer of this state, unless otherwise expressly
provided by law, shall be custodian of all securities belonging
to the state of West Virginia or by law required to be de-
posited with the state or held in legal custody by the
state, and all departments of this state, commissioners or
agents of the state, who hold any such securities, shall transfer and deliver the same to the state treasurer to be kept and held by him as legal custodian thereof until released in the manner provided by law.

The board of investments may by formal order of record fix fair and reasonable charges for the care, custody, exchange and substitution of securities deposited by insurance companies and companies issuing annuity contracts and such charges shall be collected from such companies by the state treasurer and deposited by him in the general revenue fund: Provided, That no such charge shall be made against any such company having securities of the par value of less than three hundred thousand dollars deposited hereunder.

§12-5-5. Protection and handling of securities.

The treasurer shall use due diligence in protecting such securities against loss from any cause. The securities retained in the treasury shall be kept in a vault. The treasurer shall designate certain of his employees to take special care of such securities. Only the treasurer and such designated employees shall have access to such securities, and at least two of these persons shall be present whenever such securities are handled in any manner. The employees so designated by the treasurer to take care of such securities shall, before entering upon the discharge of their duties under this article, execute a bond to be approved by the board of investments in a penalty to be fixed by said board. When the treasurer has designated the employees to take special care of such securities, he shall not remove or replace any of such employees until due notice in writing of his intention so to do has been given to the surety or sureties on such employee's bond: Provided, That the treasurer may, with the approval of the board of investments, contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of such securities, which contract shall prescribe the rules and regulations for the handling and protection thereof.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-1. Purposes and objects; how article cited.

§12-6-2. Definitions.
§12-6-1. Purposes and objects; how article cited.

This article, which may be cited as the “Investment Management Law” is enacted to modernize the procedures for the investment of funds of the state and its political subdivisions for the purpose of increasing the investment return of such funds.

§12-6-2. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

(1) “Board” means the West Virginia state board of investments;

(2) “Consolidated fund” means the investment fund managed by the board and established pursuant to subsection (b), section eight of this article;

(3) “Consolidated pension fund” means the investment fund managed by the board and established pursuant to subsection (a), section eight of this article;

(4) “Local government account” means the account within the consolidated fund established pursuant to subsection (b), section eight of this article;

(5) “Local government funds” means the moneys of a
INVESTMENTS

political subdivision transferred to the board for deposit in
the local government account;

(6) "Pension funds" means and includes the workmen's
compensation fund; the state teachers retirement system
funds; the death disability and retirement fund for members
of the department of public safety; the public employees
retirement system funds; the judges retirement fund; and such
other retirement or pension funds and systems as may be
hereafter established on behalf of public employees of the state
or of its political subdivisions and administered by the state;

(7) "Securities" means all bonds, notes, debentures or other
evidences of indebtedness;

(8) "State account" means the account within the consoli-
dated fund established pursuant to subsection (b), section
eight of this article; and

(9) "State funds" means all moneys of the state which may
be lawfully invested except (a) the pension funds (as defined
in subdivision (6) of this section), (b) the "school fund" es-
tablished by section four, Article XII of the state constitu-
tion and (c) the sinking funds administered and controlled by
the state municipal bond commission.

§12-6-3. State board of investments continued; body corporate;
members.

The state board of investments is hereby continued as a
body corporate of the state authorized to exercise all of the
powers and functions granted to it pursuant to this article.
The governor, state treasurer and state auditor shall be the
members of the board.

§12-6-4. Officers; organization; surety bonds for members and
employees.

The governor shall be the chairman and the state treasurer
shall be the executive secretary of the board and the custodian
of all funds, securities and assets held by the board. The office
of the state treasurer shall act as staff agency for the board.
The board shall meet quarterly and may include in its by-
laws procedures for the calling and holding of additional meetings.

Each member of the board shall give a separate and additional fidelity bond from a surety company qualified to do business within this state in a penalty amount of two hundred fifty thousand dollars for the faithful performance of his duties as a member of the board. In addition, the board will purchase a blanket bond for the faithful performance of its duties in the amount of five million dollars excess of the two hundred fifty thousand dollar individual bond required of each member by the provisions of this section. The board may require a fidelity bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys held by the board, and the amount of such fidelity bond shall be fixed by the board. The premiums payable on all fidelity bonds shall be an expense of the board.

§12-6-5. Powers of the board.

The board may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes. The board may:

(1) Adopt and use a common seal and alter the same at pleasure;

(2) Sue and be sued;

(3) Enter into contracts and execute and deliver instruments;

(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

(5) Promulgate and enforce bylaws, rules and regulations for the management and conduct of its affairs;

(6) Retain and employ legal, accounting, financial and investment advisors and consultants;

(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities, and invest funds in interest earning deposits;
(8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;

(9) Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of such securities to the original seller at a stated price;

(10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of such securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the pension funds and other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;

(12) Enter into agreements with political subdivisions of the state whereby moneys of such political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services; and

(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management thereof.

§ 12-6-6. Costs and expenses; fees for services.

All costs and expenses of the board including fees of professional consultants, advisors and auditors, brokerage commissions and all other necessary expenses of the board incurred in the performance of its functions shall be proper charges against, and payable on a pro rata basis from, the earnings of the various funds managed by the board.

The fees collected by the board for its services to political subdivisions shall be deposited in the general revenue fund of this state.

§ 12-6-7. Legal status of agencies and boards continued.

Except as otherwise provided in this article, every state agency or board shall continue to have all of the powers and shall exercise all of the functions and duties vested in or im-
posed upon it by law, as to any fund, and shall continue to be constituted as provided by existing law.

§12-6-8. Investment funds established; management thereof.

(a) There is hereby established a special investment fund to be managed by the board and designated as the “consolidated pension fund” for the common investment of pension funds. All administrators, custodians or trustees of the various pension funds are hereby authorized to make moneys available to the board for investment. Pension funds received by the board shall be deposited in the consolidated pension fund. Any security deposited by the various pension funds shall be valued at the prevailing market price on the day of deposit.

(b) There is hereby also established a special investment fund to be managed by the board and designated as the “consolidated fund”. The consolidated fund shall consist of a special account for the common investment of state funds designated as the “state account” and a special account for the common investment of local government funds designated as the “local government account”. Moneys in both accounts may be combined for the common investment of the consolidated fund on an equitable basis.

(c) Each board, commission, department, official or agency charged with the administration of state funds is hereby authorized to make moneys available to the board for investment. State funds received by the board shall be deposited in the state account.

(d) Each political subdivision of this state through its treasurer or equivalent financial officer is hereby authorized to enter into agreements with the board for the investment of moneys of such political subdivision: Provided, That it first be determined by the treasurer for such political subdivision that the available interest rate offered by an acceptable depository in such treasurer’s county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments. Local government funds received by the board pursuant to such agreements shall be deposited in the local government account.
(e) Each county board of education through its treasurer is hereby authorized to enter into agreements with the board of investments for the investment of moneys of such county board of education: Provided, however, That it first be determined by the treasurer for such county board of education that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments.

(f) Moneys held in the various funds and accounts administered by the board shall be invested as permitted in section nine and subject to the restrictions contained in section ten of this article. The board shall maintain records of the deposits and withdrawals of each participant and the performance of the various funds and accounts. The board shall also establish such rules and regulations for the administration of the various funds and accounts established by this section as it shall deem necessary for the administration thereof, including but not limited to (1) the specification of minimum amounts which may be deposited in any fund or account and minimum periods of time for which deposits will be retained; (2) creation of reserves for losses; (3) provision for payment of expenses from earnings; and (4) distribution of the earnings in excess of such expenses or allocation of losses to the several participants in an equitable manner: Provided, That in the event any moneys made available to the board may not lawfully be combined for investment or deposited in the consolidated funds established by this section, the board may create special accounts and may administer and invest such moneys in accordance with the restrictions specially applicable thereto.


Notwithstanding the restrictions which may otherwise be provided by law as to the investment of funds, the board may invest funds made available to it in any of the following:

(a) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;
(b) Any evidence of indebtedness issued by any of the following agencies: Government National Mortgage Association, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Administration, Export-Import Bank, Federal Financing Bank, Federal Home Loan Mortgage Corporation and Student Loan Marketing Association;

(c) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the Government National Mortgage Association;

(d) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the United States: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the
written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management;

(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized; and

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one of this chapter.

§12-6-10. Restrictions on investments.

Moneys on deposit in the consolidated fund and the consolidated pension fund shall be invested as permitted by section nine of this article subject to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the portfolio of either fund be invested in securities described in subdivision (g) of said section nine;

(2) At no time shall more than twenty percent of the portfolio of either fund be invested in securities described in said subdivision (g) which mature within one year from the date of issuance thereof;

(3) At no time shall more than three percent of the portfolio of either fund be invested in securities issued by a single private corporation or association, including for purposes of computation, all consolidated subsidiaries of such corporation or association.

For the purpose of making the computations required by this section, securities shall be valued in accordance with generally accepted accounting principles.

§12-6-11. Apportionment of interest earning deposits among state depositories; interest rate on such deposits.

Whenever the board determines that funds should be invested in interest earning deposits, including certificates of
deposit, with depositories eligible in this state to receive such deposits, it shall equitably apportion its offering of such funds among all such depositories in this state. The board shall make such apportionment by considering first the total assessed value of all property within each county, and as to the distribution of the offering within the county, by considering the net loans outstanding of each bank and the mortgage loans (exclusive of mortgage participations) of each state and federal savings and loan association as set forth in the banking commissioner's most recent annual report of financial institutions.

The annual rate of interest on funds placed in interest earning deposits with state depositories, including certificates of deposit, shall be determined by the board and may be adjusted by it from time to time according to the then prevailing rate of interest. The board may offer such deposits to state depositories at a rate less than the prevailing rate of interest if it determines that such action will foster economic development in the state.

§12-6-12. Investment policy; duties of board and state treasurer; standard of care.

The board shall establish policy guidelines for the investment of moneys on deposit in each of the funds managed by the board based on the needs of the participants in the various funds: Provided, That the board shall review such investments at least every three months and may require the purchase or sale of any investments. In order to effectuate its investment policies, the board may require from each participant a schedule, on an annual or more frequent basis, of anticipated deposits and withdrawals.

The office of the state treasurer shall administer the investment of each of such funds subject at all times to the policy guidelines established by the board.

Any investment made under this article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, con-
§12-6-13. Board as sole agency for Investments; exceptions.

All duties vested by law in any agency, commission, official or other board of the state relating to the investment of moneys, and the acquisition, sale, exchange or disposal of securities or any other investment are hereby transferred to the board, and the board shall be the sole agency for the investment of pension funds and state funds: Provided, That neither this section nor any other section of this article shall apply to the “board of the school fund” and the “school fund” established by section 4 of Article XII of the State Constitution or the state municipal bond commission.

§12-6-14. Reports of board.

The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various funds administered by it. A copy thereof shall be furnished to the chief financial officer of each participant, the president of the senate, speaker of the house, legislative auditor, and upon request to any legislative committee, any banking institution or state or federal savings and loan association in this state, and any member of the news media, and such report shall be kept available for inspection by any citizen of this state.

§12-6-15. Audits.

There shall be a continuous postaudit conducted by the legislative auditor of the investment transactions of the board, and a copy thereof for the preceding calendar year shall be furnished to each member of the Legislature on or before the first day of February of each year.

§12-6-16. Existing investments.

The board shall not be required to dispose of any securities or other investments lawfully held by it as of the effective date of this article.

§12-6-17. Severability of provisions.

If any provision of this article, or the applicability thereof
to any person or circumstance, is held invalid, the remainder of this article and the applicability thereof and of such provision to other persons or circumstances shall not be affected 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.

Notwithstanding any other provision of this code, when it appears to any of the various county boards of education that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the treasurer for such county board of education that the available interest rate offered by an acceptable depository in such treasurer’s county be less than the interest rate, net of administrative fees referred to in article six, chapter twelve of this code, offered it through the state board of investments, the county board of education treasurer may, with the approval in writing of each county board of education whose funds are involved, make such funds available to the state board of investments for investment in accordance with the provisions of said article six, chapter twelve of the code.

Any income earned on such investment shall be allocated by such treasurer to the board of education whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the board of investments.

CHAPTER 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.

Any public officer of the state may, with the approval of the board of public works, cause any or all records, papers or
documents kept by him to be photographed, microphotographed or reproduced on film. Such photographic film shall be of durable material and the device used to reproduce such records on such film shall be one which accurately reproduces the original thereof in all details.

Such photographs, microphotographs or photographic film shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original. Whenever photographs, microphotographs or reproductions on film have been made and put in conveniently accessible fire-proof files, and provision has been made for preserving, examining and using the same, the respective heads of the departments, divisions, institutions and agencies of the state may, with the approval of the board of public works, cause the records and papers so photographed, microphotographed or reproduced on film, or any part thereof, to be destroyed; but before any such records, papers or documents are authorized to be destroyed, the board of public works shall obtain the advice and counsel of the state historian and archivist, or his designated representative, as to the desirability of placing the said records, papers and documents in the archives of that department, whereupon the board of public works may cause such records, papers and documents to be so transferred: Provided, That the state treasurer may at his discretion destroy any canceled checks of the state after ten years have elapsed since the date of the check, whether or not such checks have been photographed, microphotographed or reproduced on film: Provided, however, That any canceled bonds or interest coupons of any bond issues of this state in the custody of the treasurer, or for which the treasurer acts as fiscal agent or paying agent, may at his discretion be destroyed by one of the two methods described below:

Method 1—The treasurer shall maintain a permanent record for the purpose of recording the destruction of bonds and coupons, showing the following: (1) With respect to bonds, the purpose of issuance, the date of issue, denomination, ma-
turity date, and total principal amount; and (2) with respect to
coupons, the purpose of issue and date of the bonds to which
the coupons appertain, the maturity date of the coupons, and,
as to each maturity date, the denomination, quantity and total
amount of coupons.

After recording the specified information, the treasurer
shall have the canceled bonds and coupons destroyed either
by burning or shredding, in the presence of an employee of the
treasurer and an employee of the legislative auditor, each of
whom shall certify that he saw the canceled bonds and cou-
pons destroyed. Such certificates shall be made a part of the
permanent record. Canceled bonds or coupons shall not be
destroyed until after one year from the date of payment.

Method II—The treasurer may contract with any bank
or trust company acting as paying agent or copaying agent for
a bond issue of the state for the destruction of bonds and in-
terest coupons which have been canceled by the paying agent.
The contract shall require that the paying agent give the
treasurer a written certificate containing the same information
required by Method I. Such certificate shall include a sworn
statement that the described bonds or coupons have been de-
stroyed. The certificate shall be made a part of the trea-
surer’s permanent record.

Each contract shall also require that the paying agent be
responsible for proper payment and disposition of all bonds
and coupons, and for any duplicate payments to unauthorized
persons and nonpayment to authorized persons occurring as a
result of destruction of bonds or coupons under this section.
In addition, the treasurer may require the paying agent to sub-
mit an indemnity bond, in an amount to be determined by the
treasurer, to assure performance of the duties specified in this
section. Canceled bonds or coupons may not be destroyed
until one year from the date of payment.

For purposes of this section, the term “bonds” shall include
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.

There shall be two jury commissioners of the circuit court of each county. They shall be of opposite politics, citizens of good standing, residents in the county for which they are appointed, and well-known members of the principal political parties thereof; the chairman of a political party shall be ineligible to appointment, and no jury commissioner, after having served four years, shall be eligible to succeed himself in such office: Provided, That a jury commissioner in a Class V, Class VI or Class VII county, as defined in section three, article seven, chapter seven of this code, shall be eligible for appointment to succeed himself for one four-year term in such office.

Jury commissioners shall be appointed by the circuit court,
or the chief judge thereof, of their respective counties. The terms of office shall be four years and shall commence on the first day of June following appointment.

Those jury commissioners appointed by the circuit court or the chief judge thereof, in office when this section takes effect, shall continue in office unless removed, until the expiration of their respective terms of office, and their successors shall be appointed, as aforesaid, alternately, so that a period of two years shall intervene between the dates when the terms of office of the two commissioners shall begin and expire.

Jury commissioners may be removed from office by the circuit court, or the chief judge thereof, for official misconduct, incompetency, habitual drunkenness, neglect of duty or gross immorality. Vacancies caused by death, resignation or otherwise shall be filled for the unexpired term in the same manner as the original appointments.

Jury commissioners shall receive as compensation for their services, while necessarily employed, an amount to be fixed by the judge of the circuit court, or the chief judge thereof, in accordance with rules of the supreme court of appeals, which shall be payable out of the state treasury upon orders of the circuit court or the chief judge thereof.

Before entering upon the discharge of his duties, a jury commissioner shall take and subscribe, before the clerk of the circuit court, who is hereby authorized to administer the same, an oath, to be filed and preserved by him in his office, to the following effect:

State of West Virginia,

County of __________________________, to wit:

I, A ______________________________ B __________________________, do solemnly swear that I will support the Constitution of the United States and the Constitution of this State and will faithfully discharge the duties of jury commissioner to the best of my skill and judgment, and that I will not place any person upon the jury list in violation of law, or out of fear, favor or affection.
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 dwelling unit and surrounding premises in a fit and habitable condition, and shall thereafter maintain the leased property in such condition; and

7 (2) Maintain the leased property in a condition that meets requirements of applicable health, safety, fire and housing codes, unless the failure to meet those requirements is the fault of the tenant, a member of his family or other person on the premises with his consent; and

12 (3) In multiple housing units, keep clean, safe and in repair all common areas of the premises remaining under his control that are maintained for the use and benefit of his tenants; and
(4) Make all repairs necessary to keep the premises in a fit and habitable condition, unless said repairs were necessitated primarily by a lack of reasonable care by the tenant, a member of his family or other person on the premises with his consent; and

(5) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him by written or oral agreement or by law; and

(6) In multiple housing units, provide and maintain appropriate conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit; and

(7) With respect to dwelling units supplied by direct public utility connections, supply running water and reasonable amounts of hot water at all times, and reasonable heat between the first day of October and the last day of April, except where the dwelling unit is so constructed that running water, heat or hot water is generated by an installation within the exclusive control of the tenant.

(b) If a landlord's duty under the rental agreement exceeds a duty imposed by this section, that portion of the rental agreement imposing a greater duty shall control.

(c) None of the provisions of this section shall be deemed to require the landlord to make repairs when the tenant is in arrears in payment of rent.

(d) For the purposes of this section, the term "multiple housing unit" shall mean a dwelling which contains a room or group of rooms located within a building or structure forming more than one habitable unit for occupants for living, sleeping, eating and cooking.
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.

"Commission" as used in this article means the legislative commission on pensions and retirement.

§4-9-2. Creation of commission.

There is hereby created a permanent commission to continually study and investigate public retirement systems. The name of the commission shall be the legislative commission on pensions and retirement.
§4-9-3. **Powers and duties.**

1 The commission shall make a continuing study and investigation of retirement benefit plans applicable to nonfederal government employees in this state. The powers and duties of the commission shall include, but not be limited to, the following:

6 (a) Study of retirement benefit plans applicable to non-federal government employees in the state of West Virginia, including, without limitation, federal plans available to such employees;

6 (b) Making of recommendations within the scope of the study with particular attention to financing of the various pension funds and financing of accrued liabilities;

6 (c) Consideration of all aspects of pension planning and operation, and making of recommendations designed to establish and maintain sound pension policy as to all funds;

6 (d) Filing of a report to each regular session of the Legislature;

6 (e) Analyzing of each item of proposed pension and retirement legislation, including amendments thereto, with particular reference to analysis as to cost, actuarial soundness, and adherence to sound pension policy, and reporting of its findings in regard thereto to the Legislature; and

6 (f) Maintenance of reference materials concerning pension and retirement matters, including, without limitation, information 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 Senate to be appointed by the president of the Senate and three members of the House of Delegates to be appointed by the Speaker of the House, and the governor shall appoint three members, one from labor, one from the business community and one from the general public. No more than two of the three members appointed by the President of the Senate
and the Speaker of the House, respectively, may be members of the same political party. The first appointed members of the commission shall serve for a term expiring on the thirtieth day of June in the year of the next succeeding regular session of the Legislature. At the commencement of such next succeeding regular session and at the commencement of regular sessions every two years thereafter, members of the commission shall be appointed for two year terms beginning the first day of July in the year of each such regular session. Vacancies on the commission shall be filled for unexpired terms in the same manner as appointments to the commission.

§ 4-9-5. **Time and place of meetings; officers.**

The commission shall hold meetings at such times and places as it may designate. It shall select a chairman, a vice chairman and such other officers from its membership as it may deem necessary.

§ 4-9-6. **Staff.**

The commission may employ such professional, clerical and technical assistants as it deems necessary in order to perform the duties herein prescribed.

§ 4-9-7. **Assistance of other agencies.**

The commission may request information from any state officer or agency in order to assist in carrying out the terms of this article, and such officer or agency is authorized and directed to promptly furnish any data requested.

§ 4-9-8. **Members’ expenses; reimbursement.**

The members of the commission and its assistants shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder from the fund of the joint committee on government and finance. Compensation and other expenses of the commission may be paid from the fund of the joint committee on government and finance.
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.

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

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
MENTALLY ILL PERSONS

passive, which demonstrates that he is dangerous to himself; or

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

(3) A complete inability to care for himself by reason of mental retardation.

ARTICLE 3. CONFIDENTIALITY.


No consent or authorization for the transmission or disclosure of confidential information shall be effective unless it is in writing and signed by the patient or client by his legal guardian. Every person signing an authorization shall be given a copy.

Every person requesting such authorization shall inform the patient, client or authorized representative that refusal to give such authorization will in no way jeopardize his right to obtain present or future treatment except where and to the extent disclosure is necessary for treatment of said patient or client or for the substantiation of a claim for payment from a person other than the patient or client.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.


(a) No person shall be admitted as an inpatient into a mental health facility as a voluntary patient until such person has been told and has received a written statement containing in bold print a statement that once he voluntarily admits himself into such facility, his release may not be voluntary, that the facility may seek to involuntarily commit him and may hold him against his will for thirty days pending a hearing and indefinitely after the hearing if he is committed, and that such statement shall inform the individual that he may request
mentally ill persons [Ch. 62]

release at any time. Further, the individual shall be advised in writing of his rights upon admission as an inpatient to a mental health facility, including, but not limited to, those rights afforded pursuant to section nine, article five of this chapter. A copy of the statement shall be filed in the individual's permanent records and shall contain the name of the person who made the oral and written disclosure.

(b) No voluntary inpatient shall be subjected to any course of treatment without such patient's written consent. Such consent shall be revocable at any time and shall not be valid for a period exceeding six months.

c) One person in every mental health facility shall be designated as the voluntary patient coordinator. Such coordinator, or his designee while the coordinator is not on duty, shall be responsible for the disclosures required by this section and for any and all discussions with voluntary 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.


§27-5-4. Legal proceedings for involuntary hospitalization.

§27-5-6. Examination of newly admitted patients; failure to examine; disposition of patients after examination; demands for release.


§27-5-1. Involuntary commitment; hearing; appointment of mental hygiene commissioner; caseworker defined.

No individual shall be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county wherein such person resides or was found and then only after a full hearing on the issues relating to the necessity of committing an individual to a mental health facility. The circuit court of each county shall appoint a competent attorney and, if necessary, one additional attorney to
serve as an alternate in each county to preside over such
hearings, who shall be designated "mental hygiene com-
missioner." He shall be a person of good moral character
and of standing in his profession and he shall, before as-
suming the duties of such commissioner, take the oath
required of other special commissioners as provided in
article one, chapter six of this code. The mental hygiene
commissioner may sign and issue summons for the at-
tendance, at any hearing held pursuant to section four,
article five of this chapter, of the individual sought to be
committed; may sign and issue subpoenas for witnesses,
including subpoenas duces tecum; may place any witness
under oath; and may make findings of fact on evidence
and may make conclusions of law, but such findings and
conclusions shall not be binding on the circuit court. The
circuit court by order entered of record shall allow the
commissioner a reasonable fee for his services in connec-
tion with each case. The mental hygiene commissioner
shall discharge his duties and hold his office at the pleasure
of the circuit court by which he is appointed and may
be removed at any time by the court. It shall be the duty
of the mental hygiene commissioner to conduct orderly
inquiries into the mental health of any individual brought
before him concerning the advisability of committing the
individual to a mental health facility. The mental hygiene
commissioner shall safeguard, at all times, the rights and
interests of the individual as well as the interests of the
state. The mental hygiene commissioner shall make a
written report of his findings to the circuit court. In any
proceedings before any court of record as set forth in
this article, the court of record shall appoint an inter-
preter for any individual who is deaf or cannot speak
or who speaks a foreign language and who may be subject
to involuntary commitment to a mental health facility.

In all proceedings under this article, it shall be the
duty of the prosecuting attorney or one of his assistants
to represent the applicants.

Upon written order of the circuit court or the mental
hygiene commissioner of the county where the individual
formally accused of being mentally incompetent, mentally
MENTALLY ILL PERSONS

retarded or addicted is a resident or is found, the sheriff
of that county shall take said individual into custody
and transport him to and from the place of hearing and
the mental health facility.

As used in this article, the term "caseworker" means a
person employed by a mental health facility, state hos-
pital, county health department or the state department
of welfare, as an agent for the providing of the social
or medical services, or both, of such facility, hospital or
department.

§27-5-2. Involuntary hospitalization; admission by medical
certification; emergency procedure; examination;
hearings; release.

(a) Any individual may be admitted to a mental health
facility upon:

(1) Written application under oath to the facility by
any adult person and certification by two physicians or
a physician and a psychologist that they have examined
the individual and that they are of the opinion that he
is mentally ill, mentally retarded or addicted and be-
cause of his mental illness, mental retardation or addiction
he is likely to cause serious harm to himself or others if
he is allowed to remain at liberty. Admission to a mental
health facility in accordance with the procedure set
forth in this subdivision shall be referred to as a medical
certification admission; or

(2) Written application under oath to the facility by
a health officer, caseworker or law-enforcement officer
stating his belief that the individual, because of symptoms
of mental illness, mental retardation or addiction, is
likely to cause serious harm to himself or others if not
immediately restrained and the grounds for such belief
and certification by at least one physician or one psy-
chologist that he has examined the individual and that
he is of the opinion the individual is mentally ill, mentally
retarded or addicted and because of his mental illness,
mental retardation or addiction he is likely to cause
serious harm to himself or others if not immediately
restrained. Admission to a mental health facility in
accordance with the procedures set forth in this sub-
division (2) shall be referred to as an emergency admis-
sion.

(b) Any individual with respect to whom such certifi-
cation has been issued may not be admitted on the basis
thereof at any time after the expiration of three days
from the date of such examination in the case of emer-
gency admission with one physician's or psychologist's
certificate in accordance with subdivision (2), subsection
(a) of this section or fifteen days from the first examina-
tion in the case of medical certification admission in
accordance with subdivision (1), subsection (a) of this
section. A certification under this section must include
findings and conclusions of the mental examination, the
date, time and place thereof, and the facts upon which
the conclusion of likelihood of causing serious harm is
based. The chief medical officer may, with the approval
of the director of health, transfer such individual to a
state hospital or to another similar type of mental health
facility after determining that no less restrictive treat-
ment alternative is suitable or available. The chief medi-
cal officer of the mental health facility admitting the
individual shall forthwith make a report thereof to the
director of health.

When an individual is admitted to a mental health
facility pursuant to the provisions of this section, the
chief medical officer thereof shall immediately give notice
of the individual's admission to the individual's spouse,
if any, and one of the individual's parents or parent
or guardian, or if there be no such spouse, parents or
guardians to one of the individual's adult next of kin:
Provided, That such next of kin shall not be the applicant.
Notice shall also be given to the community mental health
facility, if any, having jurisdiction in the county of
the individual's residence. Such notices other than to
the community mental health facilities shall be in writing
and shall be transmitted to such person or persons at his,
her or their last-known address by certified or registered
mail, return receipt requested.

(c) After the individual's admission to a mental health
facility, he shall not be detained more than three days, excluding Sundays and holidays, unless, within such period, the individual is examined by two staff physicians or one staff psychologist and one staff physician and the likelihood that the individual will cause serious harm to himself or others is confirmed by such physicians, or psychologist and physician. No physician or psychologist shall confirm likelihood of serious harm unless recent overt acts alleged in detail in the application clearly demonstrate such likelihood: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation. The physicians, or psychologist and physician may jointly examine the individual but must make separate, independent and signed evaluations of his condition.

(d) If, on the basis of the examination by the two staff physicians, or one staff psychologist and one staff physician, the chief medical officer determines that the individual should continue to be hospitalized, a written request for a hearing shall be sent to the clerk of the circuit court of the county of the individual's residence or to the clerk of the circuit court of the county where he was found within five days after the person's admission. After the request for hearing is filed, the hearing shall not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing. Within a reasonable time after receipt of the request, the circuit court or mental hygiene commissioner shall conduct a hearing pursuant to section four of this article on the question of the individual's mental health and the need for his further hospitalization, but in no event shall such hearing be held later than twenty days after the admission of the individual to a mental health facility: Provided, That on the verified motion of the individual, the hearing may be continued for a period of time not to exceed ten days.

(e) Unless he chooses to change his status to that of
voluntary hospitalization, an individual hospitalized pursuant to this section shall be released without fail:

(1) Within three days after his admittance to a mental health facility, unless he has been examined by two staff physicians or one staff psychologist and one staff physician, both of whom confirm in writing that the individual is likely to cause serious harm to himself or others if not immediately restrained; or

(2) Within the time prescribed by section two-a of this article, unless the individual has been afforded a probable cause hearing and a determination and order made as prescribed therein; or

(3) Within three days after a probable cause hearing, unless the chief medical officer has sent a written request within such time to the clerk of the circuit court of the county of which the individual is a resident or where he was found for a hearing on the question of the individual's mental condition and the need for further hospitalization; or

(4) Within twenty days after his admittance to a mental health facility, unless a hearing has been conducted pursuant to the provisions regarding legal proceedings for involuntary hospitalization and a determination and order have been made as prescribed therein on the question of the individual's mental condition or unless the individual has obtained a continuance not to exceed ten days. If the individual has been afforded a timely probable cause hearing in accordance with section two-a of this article, such period shall be thirty days after admittance.


The individual may not be detained pursuant to section two of this article for a period exceeding seventy-two hours, excluding Sundays and holidays, unless within such period a probable cause hearing is held before the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he was found, or if the individual is hos-
8 pitalized in a mental health facility located in a
county other than where he resides or was found, in
the county of the mental health facility. If requested
by the detained individual or his counsel, the hearing
may be postponed for a period not to exceed forty-
eight hours. The individual must be present at the
hearing and has the right to present evidence and to
examine testimony offered. The individual has the right
to remain silent and to be proceeded against by the
rules of evidence. The individual must be appointed
counsel, if unable to afford counsel, at least twelve hours
prior to the hearing.

At the conclusion of the hearing, if the mental hygiene
commissioner or circuit court finds that there is probable
cause to believe that such individual as a result of
mental illness, mental retardation or addiction is likely
to cause serious harm to self or others, and further
that the individual could not be treated in a less restric-
tive alternative than in a state hospital or mental health
facility, the commissioner or court may order that such
individual be detained in a state hospital or other men-
tal health facility pending a hearing pursuant to section
four of this article.


1 When any person, health officer, caseworker or law-
enforcement officer has reason to believe that an in-
dividual is mentally ill, mentally retarded or addicted
and because of his mental illness, mental retardation
or addiction is likely to cause serious harm to himself
or others if allowed to remain at liberty while awaiting
an examination and certification by a physician, or
psychologist, physicians, or physician and psychologist,
as the case may be, pursuant to section two of this
article, such person, health officer, caseworker or law-
enforcement officer may make application under oath,
to the circuit court or mental hygiene commissioner
of the county of which the individual is a resident or
to the circuit court or mental hygiene commissioner
of the county where he may be found, giving such
information and stating such facts therein as may be required, upon the form provided by the department of health and the circuit court or mental hygiene commissioner shall thereupon enter an order for the individual named in such application to be taken into custody and detained, but not incarcerated in a jail or penal institution, for the purpose of an examination by at least one physician or psychologist to take place within fourteen hours after the individual is taken into custody. Not later than fourteen hours after the individual is taken into custody, the individual shall be released from custody, unless proceedings have been instituted pursuant to section two of this article.

§27-5-4. Legal proceedings for involuntary hospitalization.

(a) Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application under oath and the certificate or affidavit as hereinafter provided with the clerk of the circuit court or mental hygiene commissioner of the county of which the individual is a resident or with the clerk of the circuit court or mental hygiene commissioner of the county where he may be found, by any adult person having personal knowledge of the facts of the case.

Such application shall be made under oath and shall state the belief of the applicant that because of symptoms of mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others and the grounds for such belief, stating in detail the recent overt acts upon which such belief is based: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation. Applications shall not be filed with regard to individuals who are merely epileptics, mentally deficient or senile. The written application, certificate, affidavit and any warrants issued pursuant thereto, including any papers and documents
MENTALLY ILL PERSONS

related thereto filed with any circuit court or mental hygiene commissioner for the involuntary hospitalization of any individual shall not be open to inspection by any person other than the individual, except upon authorization of the individual or his legal representative or by order of the circuit court and such records shall not be published except upon the authorization of the individual or his legal representative. Such applicant shall file with his application the certificate of a physician or a psychologist stating that in his opinion the individual is mentally ill, mentally retarded or addicted and that because of his mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others if he is allowed to remain at liberty and therefore he should be hospitalized, stating in detail the recent overt acts upon which such conclusion is based: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation. In lieu of said certificate, an affidavit shall be filed by the applicant showing facts that the individual has refused to submit to examination by a physician or a psychologist.

(b) Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the clerk of the circuit court give notice of the hearing (1) to the individual, (2) to the applicant or applicants, (3) to the individual's spouse, one of the parents or guardians, or if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin: Provided, That such person is not the applicant, (4) to the mental health authorities serving the area, (5) to the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of such individual's residence, and (6) to the
prosecuting attorney of the county in which the hearing
is to be held. Such notice shall be served on the individ-
ual by personal service of process not less than eight
days prior to the date of the hearing, and shall specify
the nature of the charges against the individual; the
facts underlying and supporting the application of his
involuntary commitment; his right to have counsel ap-
pointed for him if he is an indigent; his right to consult
with and be represented by counsel at every stage of
the proceedings; and the time and place of the hearing.
The notice to the individual's spouse, parents or parent
or guardian, the individual's adult next of kin, or to
the circuit court in the county of the individual's
residence may be by personal service of process or
by certified or registered mail, return receipt re-
quested, and shall state the time and place of the
hearing.

Within a reasonable time after notice of the com-
mencement of proceedings is given, the circuit court or
mental hygiene commissioner shall appoint two phy-
sicians or a physician and psychologist, other than the
physician or psychologist whose certification may have
accompanied the application under this section to the
circuit court or mental hygiene commissioner, to ex-
amine the individual and report to the circuit court
or mental hygiene commissioner their findings as to the
mental condition of the individual and the likelihood
of his causing serious harm to himself or others. The
physicians or physician and psychologist may jointly
examine the individual, but must make separate, inde-
pendent and signed evaluations of this condition stating
the facts upon which the conclusions therein are
based.

If the designated physicians or physician and psy-
chologist report to the circuit court or mental hygiene
commissioner that the individual has refused to submit
to an examination, the circuit court or mental hygiene
commissioner shall order him to submit to such exam-
ination. The circuit court or mental hygiene commis-
sioner may direct that the individual be taken into
custody, but not incarcerated in a jail or penal institution, for the purpose of an immediate examination by the designated physicians or physician and psychologist. All such orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After such examination has been completed, the individual shall be released from custody unless such custody is in a mental health facility pursuant to an emergency hospitalization as provided for in section two of this article. If the reports of the appointed physician or physicians and psychologists do not confirm that the individual is mentally ill, mentally retarded or addicted and might be harmful to himself or others, then the proceedings for his involuntary hospitalization shall be dismissed.

(c) The individual shall be present at the hearing and he, the applicant and all persons entitled to notice of such hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses. In the event that the individual is an indigent person and has not retained counsel, the court or mental hygiene commissioner at least seven days prior to hearing shall appoint a competent attorney, and shall inform the individual of the name, address and telephone number of his appointed counsel. Such counsel shall conduct a timely interview, make investigation and secure appropriate witnesses, and shall be present at the hearing and protect the interest of the individual. The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in felony cases by section one, article two, chapter sixty-two of this code. Any counsel representing an individual shall be entitled to copies of all medical reports, psychiatric or otherwise. The individual shall have the right to have an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. The cost of such independent expert shall be borne by the individual unless he is indigent. The circuit court or mental hygiene commissioner shall hear evidence from all in-
interested parties in chamber, including testimony from representatives of the community mental health facility. The individual shall not be compelled to be a witness against himself. The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered. The circuit court or mental hygiene commissioner shall be bound by the rules of evidence except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician's or psychologist's testimony notwithstanding failure to inform the individual that this statement may be used against him. Any psychologist or physician testifying shall bring all records pertaining to said individual to said hearing. Such medical evidence obtained pursuant to an examination under this section, or section two or section three of this article, is not privileged information for purposes of a hearing pursuant to this section. A transcript or recording shall be made of all proceedings, whether before the circuit court or mental hygiene commissioner, and a transcript shall be made available to the individual or his counsel within thirty days, if the same is requested for the purpose of further proceedings. In any case wherein an indigent person intends to pursue further proceedings the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings and the costs of such transcript shall be paid by the county wherein the hearing was held.

(d) Upon completion of the hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings as to whether or not (1) the individual is mentally ill, mentally retarded or addicted and because of his illness, retardation or addiction is likely to cause serious harm to himself or to others if allowed to remain at liberty and (2) is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county. The circuit court or mental hygiene commissioner shall also make a finding as to
whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.

The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof. Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months. The individual shall not be detained in a mental health facility for a period in excess of five days after a hearing pursuant to this section unless an order has been entered and received by the facility. If the order is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization, to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings. An order for an indeterminate period shall expire of its own terms at the expiration of two years from the date of the last order of commitment.

If the circuit court or mental hygiene commissioner finds that the individual is not mentally ill, mentally retarded or addicted, the proceeding shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill, mentally retarded or addicted but is not because of such illness, retardation or addiction likely to cause serious harm to
himself or others if allowed to remain at liberty, the proceedings shall be dismissed.

(e) The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry thereof forward a certified copy of same to the clerk of the circuit court of the county of which the individual is a resident.

If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held, and the individual is not currently a resident of a mental health facility, a transcript of the evidence adduced at the hearing of such individual, certified by the clerk of the circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which such individual is a resident, who shall immediately present such transcript to the circuit court or mental hygiene commissioner of said county. If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in such transcript that such individual should be hospitalized as determined by the standard set forth above, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance. This order shall be transmitted forthwith to the clerk of the circuit court of the county in which the hearing was held who shall execute said order promptly.

(f) In lieu of ordering the patient to a mental health facility, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from such responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of such individual until further order of the court.

(g) If the individual found to be mentally ill, men-
tally retarded or addicted by the circuit court or mental
hygiene commissioner is a resident of another state,
this information shall be forthwith given to the director
of health, who shall make appropriate arrangements
for his transfer to the state of his residence conditioned
on the agreement of the individual except as qualified
by the interstate compact on mental health.

(h) The chief medical officer of a mental health
facility admitting a patient pursuant to proceedings
under this section shall forthwith make a report of such
admission to the director of health.

(i) The state shall pay the attorney fees, court re-
porter fees and commissioner fees out of a special fund
to be established within the office of the state auditor
to be known as the “mental hygiene fund.” The county
commission shall pay out of the county treasury all
other expenses incurred in the hearings conducted under
the provisions of this article, whether or not hospitaliza-
tion is ordered, including any fee allowed by the circuit
court by order entered of record for any physician,
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
shall arrange for psychiatric examinations of every pa-
tient hospitalized pursuant to the provisions of section
two of this article. If such examination is not completed
within three days after the date of admission, or if
the physician designated by the chief medical officer
cannot certify that in his opinion the patient is mentally
ill, mentally retarded or addicted and is likely to injure
himself or others if allowed to be at liberty, the patient
shall be discharged immediately.

11 If, in the opinion of the designated examining physician,
the patient is mentally ill, mentally retarded or addicted
and because of such mental illness, mental retardation or
addiction he is likely to injure himself or others if allowed
to be at liberty, the chief medical officer shall, within five
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-  
1 pitalization; appeal procedures for release of pa-  
2 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
of the examination and the conclusions resulting therefrom and he shall either affirm the patient's continued hospitalization or discharge the patient from confinement within three days from the date of his appeal.

If, within three days from the date of the patient's appeal, the chief medical officer has not taken action or has taken action unfavorable to the patient, the patient may appeal to a review board of appeal which shall be appointed by the director of health. The review board shall consist of three members, one of whom shall be a psychiatrist. The review board shall consider the patient's clinical record, the report of the examination and conclusions therefrom and any evidence offered by the patient and by the chief medical officer of such facility. The review board shall either order the patient's continued hospitalization or shall order the chief medical officer to discharge the patient within seven days from the date of the patient's appeal to the review board.

If, within seven days from the date of the patient's appeal to the review board, the review board has taken no action or has taken action unfavorable to the patient, the patient may appeal to the circuit court of the county of the patient's residence or to the circuit court of the county where the patient is hospitalized. The circuit court or its mental hygiene commissioner shall hold a hearing to review the hospitalization of the patient. If the patient has appealed to the circuit court within one year prior to the present appeal it shall be within the circuit court's discretion to affirm or deny such appeal. A hearing under this section shall be conducted in the manner prescribed in subsections (c) and (d), section four of this article. At such hearing the burden of proof shall be on the person proposing the involuntary hospitalization.

The administrative and appeal remedies available by virtue of this section shall not be construed to in any way limit or precondition the right to seek release of the patient by habeas corpus. At a habeas corpus hearing, the fact that release was obtained on a previous habeas corpus petition shall not bar the consideration of
evidence presented at the original commitment proceeding.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

(a) The county commission of a person's residence may appoint a committee for a person found to be incompetent. Any finding of incompetency under this article shall be made separately and at a different proceeding from any finding of mental illness, mental retardation or addiction under article four or five of this chapter.

(b) Proceedings for the appointment of a committee for an alleged incompetent may be commenced by the filing of a verified petition of a person setting forth the facts showing the incompetency of an individual with the county commission. Upon receipt of a petition, the clerk of the county commission shall give notice of the hearing thereon to the individual and to the individual's spouse, or if the individual does not have a spouse, to the individual's adult next of kin: Provided, That such person shall not be the petitioner: Provided further, That such individual shall be served with notice of such hearing by delivering unto such individual in person written notice thereof together with a true copy of such verified petition, which notice shall be served upon the individual alleged to be incompetent at least ten days before the time of such hearing within the county in which such hearing is to be held.

Such individual alleged to be incompetent shall be accorded the right to subpoena witnesses, to be confronted with witnesses and the right to cross-examine witnesses which may be offered against him, and the county commission on or before the commencement of such hearing shall appoint a competent attorney practicing before the bar of the circuit court of the county wherein such hearing is to be held as guardian ad litem for the purpose of representing the interest of such individual throughout such proceedings under this section. Notwithstanding any requirement hereof to the contrary such hearing may proceed without the presence of the
individual alleged to be incompetent if (1) proper notice has been served upon the party alleged to be incompetent as required herein, and (2) a duly licensed physician shall have certified in writing and upon affidavit that he or she has examined such individual and that such individual is physically unable to appear at such hearing or that such an appearance would likely impair or endanger the health of such individual, or (3) such individual refuses to appear, and (4) upon the specific written findings by such commission of facts as will justify a hearing without the presence of such individual as provided in this subsection.

(c) A record shall be made of all proceedings. A transcript shall be made available to the individual or his counsel within thirty days, if the same is requested for purposes of appeal. In any case wherein an indigent person seeks an appeal, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearing and the cost of such transcript shall be paid by the county wherein the hearing was held.

(d) Upon completion of the hearing and upon the evidence presented therein the county commission may find that (i) the individual is unable to manage his business affairs, or (ii) the individual is unable to care for his physical well-being, or (iii) both, and is therefore incompetent, or (iv) that the person is competent. Evidence of mere poor judgment or of different life style shall not be competent evidence upon which to base a finding of incompetency.

(1) "Unable to manage one's business affairs" means the inability to know and appreciate the nature and effect of his business transactions, notwithstanding the fact that he may display poor judgment.

(2) "Unable to care for one's physical well-being" means the substantial risk of physical harm to himself as evidenced by conduct demonstrating that he is dangerous to himself, notwithstanding the fact that he may display poor judgment.
If the county commission finds the person to be competent, the proceedings shall be dismissed. No appointment of a committee shall be made on evidence which is uncorroborated by the testimony of a medical expert. If the individual refuses to submit to an examination by a physician, the circuit court may upon petition, issue a rule against the individual to show cause why the individual should not submit to an examination. A copy of the petition shall accompany service of the rule and such rule shall be returnable at a time to be fixed by the court.

(e) The extent of the committee's authority shall be specified in the order of the county commission. No authority of a committee shall extend beyond what is necessary for the protection of the individual. A finding of inability to care for one's physical well-being shall entitle the committee to custody of the individual, except when the individual is under a commitment order to a mental health facility, but only to the extent as is necessary for the protection of the individual.

(f) An individual found incompetent pursuant to subsection (d) of this section shall have the right to an appeal and hearing thereon in the circuit court of the county. The judge shall hear the matter on appeal as provided in article three, chapter fifty-eight of this code or order a hearing de novo on the matter.

(g) The individual or any person may apply to the county commission in the manner provided by subsection (b) of this section for termination of his committee at any time and appeal from a determination thereon in the manner provided by this section or in the alternative, the individual may seek such termination by habeas corpus.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health facilities; penal facility procedures.

(a) No person who is, or was considered to be, men-
tally ill, mentally retarded or addicted shall be denied parole or a parole hearing based upon such past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization such person shall be paroled and proceedings instituted pursuant to section four, article five, chapter twenty-seven of this code. Any time spent in such facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to section four, article five, chapter twenty-seven of this code.

(b) When a convicted person in a jail, prison or other facility is believed to be mentally ill, mentally retarded or addicted and in need of treatment, training or other services therefor, which cannot be most effectively provided at such penal facility, proceedings for the transfer of such individual may be initiated by the filing of an application by a correctional officer, warden, member of a penal institution medical staff, relative, friend or the convicted person stating that the individual is mentally ill, mentally retarded or addicted and is in need of treatment, training or other services therefor; and further, if the application is made by a member of the staff of a penal facility it shall state the nature of the treatment, training or services which the person's condition warrants and the facility to which transfer is sought. The application shall be filed with the clerk of the circuit court of the county of location of the facility to which transfer is sought or the county wherein the individual was convicted. The mental hygiene commissioner or circuit judge shall forthwith appoint counsel for the convicted person in no event later than ten days following the receipt of the application by the clerk unless the person has retained counsel.

If the application was filed by the warden or other staff member of a penal facility, the clerk of the circuit
court shall forthwith notify the respondent convicted person by certified mail, return receipt requested, delivered only to the addressee, that such application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address and telephone number of the appointed counsel. The person shall be afforded unrestricted telephone access to his counsel. If the application was filed by the convicted person or a relative or friend on such person's behalf, the clerk shall by adequate means notify the respondent or the officer of the penal facility where the individual is incarcerated. Within fifteen days after the receipt of the application, the respondent shall file a verified return admitting or denying the allegations in the application and informing the mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. If the convicted person is the respondent, counsel shall file the return after personal consultation with such person. If the respondent in such verified return does not oppose the transfer, the mental hygiene commissioner shall order the transfer of the convicted person to the facility designated in the petition.

If the transfer is opposed, the matter shall forthwith be set for hearing, in no event to exceed twenty days, and the clerk shall provide to the convicted person at least ten days' written notice by certified mail, return receipt requested, of the purpose and place of the hearing.

The convicted person shall be present at the hearing and be afforded an opportunity to testify and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from such expert as a medical witness on the person's behalf. The cost of such medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testi-
mony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within thirty days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of fact. If the petitioner is the convicted person, findings shall be made as to whether the person is mentally ill, mentally retarded or addicted, and with a positive finding the circuit court shall order transfer to the appropriate facility for treatment or training. If the petitioner is other than the convicted person and the convicted person opposes the transfer, the findings shall be made as to whether or not (1) the individual is mentally ill, or mentally retarded or addicted; (2) the individual because of mental illness, mental retardation or addiction is likely to cause serious harm to self or others; and (3) the individual would not obtain the requisite treatment or training at the penal facility or another appropriate facility; and if all of such findings are in the affirmative, the circuit court may order the transfer of such person to the designated facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder proof of mental condition and of likelihood of serious harm must be established by clear, cogent and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts: Provided, That no such evidence of recent overt acts need be introduced when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation.
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 and Reclamation Act of 1977 (Public Law 95-87), hereinafter cited as P. L. 95-87, and specifically subsection 502 (c) therein may prohibit the state from issuing surface-mining permits for coal after the third day of February, one thousand nine hundred seventy-eight, unless such permits contain conditions requiring compliance with the provisions of said federal law. Because the inability of the state to issue permits after that date would prevent the operation of surface mines which are needed to supply coal to meet energy needs
for the preservation of the public health, safety and welfare and, since authority to regulate the surface mining of coal in the state has already been vested in the department of natural resources and the reclamation commission, the Legislature does hereby intend to expand the authority of the department and the commission to issue permits in compliance with the federal law.

In addition to the other powers, duties and authority of the reclamation commission provided elsewhere in this chapter and article two, chapter twenty-two of this code, the commission may promulgate rules and regulations necessary to require the surface mining of coal in this state to be in compliance and conformity with section 515, Title V of P. L. 95-87.

In addition to the other powers, duties, and authority of the director of the department of natural resources provided elsewhere in this chapter, the director may promulgate rules and regulations adequate to enforce the rules and regulations promulgated by the reclamation commission in accordance with the preceding paragraph.

The expanded rule-making authority above mentioned may include the promulgation and enforcement of rules and regulations as prescribed by section 515, Title V of P. L. 95-87 and such authority shall specifically include the authority to regulate and enforce rules and regulations regulating the surface effect of deep mining in this state in conformity with section 515, Title V of P. L. 95-87 and article two, chapter twenty-two of this code.

The director shall cause a copy of P. L. 95-87 to be filed in the office of the secretary of state for public inspection.

The expanded rule-making authority as expressed herein shall be of an interim and temporary effect in that such expanded authority for both the director of natural resources and the reclamation commission and all such rules and regulations promulgated pursuant to the authority granted by this section shall expire and have no force
and effect after the thirtieth day of August, one thousand nine hundred seventy-nine.

All rules and regulations promulgated pursuant to the authority granted under this section shall be subject to the provisions of chapter twenty-nine-a of the code:

Provided, That this requirement shall in no way limit the application of said chapter twenty-nine-a to any other rules and regulations promulgated by the reclamation commission or the director of the department of natural resources.

CHAPTER 64
(Com. Sub. for H. B. 909—By Mr. Blevina)

[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 nonprecomputed loans require specialized knowledge of the needs of citizens of West Virginia for credit for the construction and purchase of adequate housing and of buildings and improvements for the establishment and expansion of businesses and agricultural enterprises situate in the state and of the availability of such credit at reasonable rates to the citizens of the state of West Virginia while affording a competitive return to persons extending such credit;

3 (2) Maximum interest rates on nonprecomputed loans to be secured by mortgages or deeds of trust on real property located in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and

4 (3) The prescribing of such maximum interest rates can be accomplished effectively and flexibly by the West Virginia commissioner of banking.
(b) In view of the foregoing findings, it is the purpose of this section to authorize the West Virginia commissioner of banking to prescribe from time to time the maximum interest rates on nonprecomputed loans of money made pursuant to this section to be secured by mortgages or deeds of trust on real property located in this state, subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders to charge up to the maximum interest rates so fixed.

(c) The West Virginia commissioner of banking is hereby authorized and directed to prescribe each month by order a maximum rate of interest for the next succeeding month for any nonprecomputed loan of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property located in this state, which maximum rate of interest shall not exceed the monthly index of long-term United States government bond yields for the preceding calendar month, plus an additional one and one-half percent per year rounded off to the nearest quarter of one percent per year and such maximum rate shall be valid for the term of the loan contract. For the purpose of this section, the monthly index of long-term United States government bond yields means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over-the-counter market for all outstanding United States treasury bond issues, based on available statistics, which mature in twenty years or more from the date the index is calculated, but shall not include such bonds as are redeemable at par for payment of federal estate taxes. In fixing said maximum rates of interest, the commissioner of banking shall take into consideration prevailing economic conditions including said monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional home and multifamily housing mortgage and deed of trust loans throughout the United States and on corporate interest-bearing securities of high quality, and the availability of credit at reasonable rates to the citizens of this state which will afford a competitive return to persons extending such credit.

(d) On or before the twentieth day of each month the West
Virginia banking commissioner shall ascertain the monthly index of long-term United States government bond yields for the preceding calendar month and shall then prescribe by order in accordance with subsection (c) of this section the maximum rate of interest for the next succeeding month for any non-precomputed loan of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property located in this state, and shall cause such maximum rate of interest to be issued to the public, such maximum rate of interest to be effective on the first day of the next succeeding month.

(e) Notwithstanding any other provisions of this section, the commissioner of banking shall on or before the effective date of this section prescribe by order the maximum rate of interest for any nonprecomputed loan of money pursuant to this section to be secured by a mortgage or deed of trust upon real property located in this state for the month in which this section becomes effective and shall at the earliest possible date prescribe the maximum rate of interest for any such loan for the next succeeding month, and shall issue such maximum rates of interest to the public; and the state commissioner of banking shall thereafter determine and issue the maximum rate of interest for any such loan in conformity with the other provisions of this section.

(f) As an alternative to the interest rate authorized by any other provision of this code, where a nonprecomputed loan of money is secured by a mortgage or deed of trust upon real property located in this state, the parties may, after the effective date of this section, contract in writing for the payment of interest for such loan of money at a rate, including points expressed as a percentage of the loan divided by the number of years of the loan contract, not to exceed the then effective maximum rate prescribed by the state banking commissioner pursuant to the provisions of this section and such rate shall be valid for the term of such contract: Provided, That the points charged shall not exceed one percent of the original bona fide principal amount of the loan, except that in the case of a construction loan, the points charged shall not exceed two percent of the original bona fide principal amount
of the loan: Provided, however, That the parties may contract in writing for the payment of interest for such loan of money at the rate specified in this subsection (f) only if such contract in writing also specifies that there shall be no penalty whatever for prepayment of the loan in whole or in part by cash, a new loan or otherwise, and such contract provision prohibiting any such penalty shall govern and control notwithstanding any other provision of this code to the contrary, whether such other provision was enacted before or after the enactment of this section: Provided further, That no such contract shall contain an escalation of interest clause which would allow an increase in the rate of interest being charged.

(g) For the purpose of subsection (f) of this section, the term "points" is defined as the amount of money, or other consideration, received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

(h) A commitment to make a nonprecomputed loan of money pursuant to this section to be secured by a mortgage or deed of trust upon real property located in this state which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the mortgage or deed of trust is entered into is less than the commitment rate of interest: Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of the lender to make such a loan within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of loan consummation even though the maximum rate of interest is then higher.

(i) Nothing contained in this section shall prohibit the parties to any loan transaction from contracting for a rate of interest authorized by any other provision of this code.
(j) The commissioner of banking shall promulgate rules and regulations requiring all banking institutions, savings and loan associations and other financial institutions making loans in this state of the type specified in this section to file with him quarterly reports as to the number and amount of such loans made during the preceding quarter, and such quarterly reports shall contain sufficient detail to ascertain whether the provisions of this section have promoted the making of such 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 by the department of motor vehicles; 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.
(d) "School bus" means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) "Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(g) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(h) "Road tractor" means every motor vehicle designed, used or maintained drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(i) "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

(j) "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(k) "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.
(l) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(m) "Specially constructed vehicles" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(n) "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.

(o) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

(p) "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) "Implement of husbandry" means every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his agricultural operations, including, but not limited to, trucks used for spraying trees and plants: Provided, That said vehicle shall not be let for hire at any time.

(r) "Special mobile equipment" means every vehicle not designed or used for the transportation of persons
or property and incidentally operated or moved over
the highways, including road construction or maintenance
machinery, ditch digging apparatus, well-boring ap-pa-
ratus, concrete mixers and farm tractors, when farm
tractors cannot be classified as an implement of hus-
bandry as defined in subdivision (q) of this section. The
foregoing enumeration shall be deemed partial and shall
not operate to exclude other such vehicles which are
within the general terms of this subdivision.

(s) "Pneumatic tire" means every tire in which com-
pressed air is designed to support the load.

(t) "Solid tire" means every tire of rubber or other
resilient material which does not depend upon com-
pressed air for the support of the load.

(u) "Metal tire" means every tire the surface of which
in contact with the highway is wholly or partly of metal
or other hard, nonresilient material.

(v) "Commissioner" means the commissioner of motor
vehicles of this state.

(w) "Department" means the department of motor
vehicles of this state acting directly or through its duly
authorized officers and agents.

(x) "Person" means every natural person, firm, co-
partnership, association or corporation.

(y) "Owner" means a person who holds the legal
title to a vehicle, or in the event a vehicle is the subject
of an agreement for the conditional sale or lease thereof
with the right of purchase upon performance of the con-
ditions stated in the agreement and with an immediate
right of possession vested in the conditional vendee or
lessee, or in the event a mortgagor of a vehicle is entitled
to possession, then such conditional vendee or lessee
or mortgagor shall be deemed the owner for the purpose
of this chapter.

(z) "Nonresident" means every person who is not a
resident of this state.
(aa) "Dealer" or "dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or all of such dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.

(bb) "Registered dealer" or "registered dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(cc) "Licensed dealer" or "licensed dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by such manufacturer where his books and records are kept and a large share of his business is transacted.

(ff) "Street" or "highway" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the 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 piston displacement of more than fifty cubic centimeters but not more than one hundred fifty cubic centimeters, or with not more than five brake horsepower.

§17C-1-5a. Moped.
1 "Moped" means every motorcycle or motor-driven cycle unless otherwise specified in this chapter, which is equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be fifty cubic centimeters regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed thirty miles per hour on a level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

§17C-1-8. Bicycle.
1 "Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.

ARTICLE 15. EQUIPMENT.
§17C-15-2. When lighted lamps are required.
§17C-15-7. Stop lamps required on new motor vehicles.
§17C-15-20. Multiple-beam road-lighting equipment—Requirements generally.
§17C-15-23. Lighting equipment on motorcycles, motor-driven cycles and mopeds.
§17C-15-25. Number of driving lamps required or permitted.
§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 cycle or moped operated upon a highway within this state at any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.
2. Every motorcycle, motor-driven cycle, and moped shall display lighted head lamps at all times when upon the highway.


1. (a) Every motor vehicle other than a motorcycle, motor-driven cycle or moped shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article.
2. (b) Every motorcycle, motor-driven cycle and moped shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this article.
3. (c) Every head lamp upon every motor vehicle, including every motorcycle, motor-driven cycle and
13 moped, shall be located at a height measured from the
center of the head lamp of not more than fifty-four
inches nor less than twenty-four inches to be measured
as set forth in section three of this article.


1 (a) Every new motor vehicle hereafter sold and
operated upon a highway, other than a truck tractor,
shall carry on the rear, either as a part of the tail lamps
or separately, two red reflectors, except that every
motorcycle, motor-driven cycle and moped shall carry
at least one reflector, meeting the requirements of this
section, and except that vehicles of the type mentioned
in section nine of this article shall be equipped with
reflectors as required in those sections applicable there-
to.

11 (b) Every such reflector shall be mounted on the
vehicle at a height not less than fifteen inches nor more
than sixty inches measured as set forth in section three
(b), and shall be of such size and characteristics and
so mounted as to be visible at night from all distances
within three hundred feet to fifty feet from such vehicle
when directly in front of lawful upper beams of head
lamps, except that visibility from a greater distance is
hereinafter required of reflectors on certain types of
vehicles.

§17C-15-7. Stop lamps required on new motor vehicles.

1 No person may sell any new motor vehicle, including
any motorcycle, motor-driven cycle or moped, in this
state and no person may drive such vehicle on the high-
way unless it is equipped with a stop lamp meeting the
requirements of section eighteen of this article.


1 (a) Whenever a vehicle is lawfully parked upon a
street or highway during the hours between sunset and
sunrise and in the event there is sufficient light to reveal
any person or object within a distance of five hundred
feet upon such street or highway no lights need be dis-
played upon such parked vehicle.
(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between sunset and sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motorcycle, motor-driven cycle or moped.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

§17C-15-20. Multiple-beam road-lighting equipment—Requirements generally.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combinations thereof on motor vehicles other than a motorcycle, motor-driven cycle or moped shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred and fifty feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to
reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle, motor-driven cycle or moped, registered in the state after January first, one thousand nine hundred fifty-two, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

§17C-15-23. Lighting equipment on motorcycles, motor-driven cycles and mopeds.

The head lamp or head lamps upon every motorcycle, motor-driven cycle and moped may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every said head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when it is operated at a speed of twenty-five or more miles per hour.

(2) In the event the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in section twenty (a) of this article and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section twenty (b) of this article.

(3) In the event the motorcycle, motor-driven cycle or 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
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.


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
three thousand pounds or more when operated upon a
highway shall be equipped with brakes adequate to con-
trol the movement of and to stop and to hold such vehicle
and so designed as to be applied by the driver of the
towing motor vehicle from its cab, and said brakes
shall be so designed and connected that in case of an
accidental brakeaway of the towed vehicle the brakes
shall be automatically applied.

(4) Every new motor vehicle, trailer or semitrailer
hereinafter sold in this state and operated upon the high-
ways shall be equipped with service brakes upon all
wheels, with the following exceptions: (1) That trucks
and truck-tractors having three or more axles need not
have brakes on the front wheels, except when such
vehicles are equipped with at least two steerable axles,
the wheels of one such axle need not be equipped with
brakes, (2) any motorcycle, motor-driven cycle or moped,
and (3) that any semitrailer of less than one thousand
five hundred pounds gross weight need not be equipped
with brakes.

(5) In any combination of motor-driven vehicles,
means shall be provided for applying the rearmost trailer
brakes, of any trailer equipped with brakes, in approxi-
mate synchronism with the brakes on the towing vehicle
and developing the required braking effort on the rear-
most wheels at the fastest rate; or means shall be pro-
vided for applying braking effort first on the rearmost
trailer equipped with brakes; or both of the above means
capable of being used alternatively may be employed.

(6) Every such vehicle and combination of vehicles,
except motorcycles, motor-driven cycles and mopeds,
shall be equipped with parking brakes adequate to hold
the vehicle on any grade on which it is operated, under
all conditions of loading on a surface free from snow, ice
or loose material. The parking brakes shall be capable
of being applied in conformance with the foregoing re-
quirements by the driver's muscular effort or by spring
action or by equivalent means. Their operation may be
assisted by the service brakes or other source of power
provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.

(7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance ability of brakes.—Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

<table>
<thead>
<tr>
<th>Feet to stop from 20 miles</th>
<th>Deceleration in feet per second</th>
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<tr>
<td>Vehicles or combinations</td>
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<td>of vehicles having</td>
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<tr>
<td>brakes on all wheels</td>
<td>30</td>
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<tr>
<td>Vehicles or combinations</td>
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<tr>
<td>of vehicles not having</td>
<td>40</td>
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<tr>
<td>brakes on all wheels</td>
<td></td>
</tr>
</tbody>
</table>

(c) Maintenance of brakes.—All brakes shall be maintained in good working order and shall be so adjusted as

(a) The commissioner is authorized to require an inspection of the brake on any motorcycle, motor-driven cycle or moped and to disapprove any such brake which he finds will not comply with the performance ability standard set forth in section thirty-one of this article, or which in his opinion is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(b) The commissioner may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when he determines that the brake thereon does not comply with the provisions of this section.

(c) No person shall operate on any highway any vehicle referred to in this section in the event the commissioner has disapproved the brake equipment upon such vehicle 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.

(a) No person shall operate or be a passenger on any motorcycle or motor-driven cycle unless he is wearing securely fastened on his head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the performance specifications established by the United States of America Standards Institute, Specifications for Protective Headgear for Vehicle Users, Standard Z 90.1-1966.

Helmets worn by operators and passengers shall be coated with a reflectorized substance, or have attached thereto a reflectorized material, on both sides and the back
thereof, with a minimum of ten square inches of coated
substance or attached material in each of the three lo-
cations.

(b) No person shall operate or be a passenger on any
motorcycle or motor-driven cycle unless he is wear-
ing safety, shatter-resistant eyeglasses (excluding con-
tact lenses), or eyegoggles or face shield that complies
with the performance specifications established by the
United States of America Standards Institute, Specifica-
tions for Head, Eye and Respiratory Protection Z 2.1-1959.
In addition, if any motorcycle, motor-driven cycle or
moped be equipped with a windshield or windscreen, the
windshield or windscreen shall be constructed of safety,
shatter-resistant material that complies with the perfor-
mance specifications established by the United States of
America Standards Institute, Safety Glazing Materials
for Glazing Motor Vehicles Operated on Land Highways,

(c) No person shall operate a motorcycle, motor-driven
cycle or moped on which the handlebars or grips are
more than fifteen inches higher than the uppermost part
of the operator's seat when the seat is not depressed in
any manner.

(d) A person operating a motorcycle, motor-driven
cycle or moped shall ride in a seated position facing for-
ward and only upon a permanent operator's seat attached
to the vehicle. No operator shall carry any other person
nor shall any other person ride on such a vehicle unless
the vehicle is designed to carry more than one person, in
which event a passenger may ride behind the operator
upon the permanent operator's seat if it is designed for
two persons, or upon another seat firmly attached to the
vehicle to the rear of the operator's seat and equipped
with footrests designed and located for use by the passen-
ger or in a sidecar firmly attached to the vehicle. No more
than two persons, the operator and one passenger, shall
ride the same vehicle at the same time. No person shall
ride sidesaddle on a seat.

(e) Every motorcycle, motor-driven cycle and moped
shall be equipped with a rearview mirror affixed to the handlebars and adjusted so that the operator shall have a clear view of the road and condition of traffic behind him for a distance of at least two hundred feet.

(f) There is hereby created a three-member board which shall be known as the motorcycle safety standards and specifications board. The board shall be comprised of the superintendent of public safety, the commissioner of motor vehicles and the executive director of the West Virginia safety council or a person each may designate from his own agency.

Within thirty days after the effective date of this section, the board shall meet and elect one of its members chairman. The board shall meet thereafter at least twice in each calendar year at a place the board shall determine. The board may meet more often if it deems it necessary to perform its functions.

The board is hereby authorized to issue regulations establishing standards and specifications for the protective helmet and eye protection devices as provided for in subsections (a) and (b) of this section. Not later than thirty days after its first meeting, the board shall establish these standards and specifications. The board may issue regulations establishing standards and specifications for accessory or safety equipment to be used on motorcycles, motor-driven cycles and mopeds. The board shall periodically review the standards and specifications and change them as necessary to comply with this section. The board shall cause all standards and specifications it establishes to be made available to the public and to the commissioner of motor vehicles.

(g) The commissioner of motor vehicles is hereby authorized and shall, in accordance with the standards and specifications established by the motorcycle safety standards and specifications board, approve or disapprove types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person.
The commissioner of motor vehicles is hereby authorized and shall approve or disapprove any type and make of protective helmet, eye protection device or equipment within fifteen days after submission to him for approval.

The commissioner of motor vehicles is hereby authorized to establish the procedure which shall be followed when any type and make of protective helmet, eye protection device or equipment is submitted to him for approval.

The commissioner of motor vehicles, upon approving any type and make of protective helmet, eye protection device or equipment shall issue to the applicant a certificate of approval.

The commissioner of motor vehicles shall make available to the public lists of all types and makes of protective helmets, eye protection devices and equipment that have been approved for use. All law-enforcement agencies within the state shall be mailed a copy of these lists.

When the commissioner of motor vehicles has reason to believe a type or make of protective helmet, eye protection device or equipment is being sold commercially that does not comply with the requirements of this section, he shall, after giving thirty days' previous notice to the seller, conduct a hearing upon the question of compliance of the particular safety device or equipment. After the hearing, the commissioner shall determine whether the device or equipment meets the standards and specifications established by the motorcycle safety standards and specifications board. If it does not, the commissioner shall give notice of that fact to the seller and the seller may not sell the device or equipment until it is changed or modified to comply with the standards and specifications established by the board and approved by the commissioner. The commissioner of motor vehicles shall make available to the public the fact that the particular safety device or equipment is not approved for use. If the device or equipment so disapproved by the commissioner of motor vehicles is one previously approved but which has fallen below the standards and specifications established by the board, he shall suspend or revoke the
approval issued, and he may require that the seller re-
place with an approved device or equipment any dis-
approved device or equipment sold after the notification
to the seller that it does not meet the proper standards
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

(Corn. 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.

Every vehicle registration under this chapter and every registration card and registration plate issued hereunder shall expire at midnight on the thirtieth day of June of the fiscal year for which issued: Provided, That the commissioner may extend the period during which said registration plates may be used.

Certificates of title need not be renewed annually but shall remain valid until canceled by the department for cause or upon a transfer of any interest shown there-in.

Notwithstanding the provisions of this section or of any provision of this chapter, the commissioner shall adopt, for the vehicles set forth below which are subject to registration hereunder, a staggered registration system whereby the registration of all such vehicles shall be for a period of twelve consecutive calendar
17 months, the expiration dates thereof to be staggered throughout the year.

19 (1) On or after the first day of July, one thousand nine hundred seventy-eight, all Class A motor vehicles as defined in section one, article ten of this chapter, shall be registered for a period of twelve consecutive calendar months. There hereby are established twelve registration periods, each of which shall start on the first day of each calendar month of the year and shall end on the last day of the twelfth month from date of beginning. The period ending January thirty-first shall be designated the first period, that ending February twenty-eighth (twenty-ninth) shall be designated the second; that ending March thirty-first shall be designated the third; that ending April thirtieth shall be designated the fourth; that ending May thirty-first shall be designated the fifth; that ending June thirtieth shall be designated the sixth; that ending July thirty-first shall be designated the seventh; that ending August thirty-first shall be designated the eighth; that ending September thirtieth shall be designated the ninth; that ending October thirty-first shall be designated the tenth; that ending November thirtieth shall be designated the eleventh; and that ending December thirty-first shall be designated the twelfth.

22 (2) All Class A motor vehicles, which are operated for the first time upon the public highways of this state to and including the fifteenth day of any given month shall be subject to registration and payment of fee for the twelve-month period commencing the first day of the month of operation; such motor vehicles operated for the first time upon the public highways of this state on and after the sixteenth day of any given month shall be subject to registration and payment of fee for the twelve-month period commencing the first day of the month of the next following calendar month.

23 (3) During the time necessary to accomplish the change from the present system of annual registration to the monthly series system, trucks with gross weights
of not more than eight thousand pounds, subject to registration on and after July first, one thousand nine hundred seventy-eight, shall be registered for one of twelve registration periods, which shall vary in length from a minimum of six consecutive calendar months to a maximum of seventeen consecutive calendar months as hereinafter provided. During this transitory period the registration fees shall be computed on a basis of one twelfth of the annual fee per month. In the order of the receipt of applications for registration of motor vehicles by the owners thereof, the commissioner shall allocate to each of the twelve registration periods such number of motor vehicles as will, in his judgment, as uniformly as practicable, distribute the clerical work of registering such vehicles throughout the year. In determining the number of registrations to be allocated to any given period; he may take into consideration the volume of registration of trucks and other vehicles not under the monthly series registration system. The twelve registration periods necessary to accomplish the change from the present system of annual registration to the monthly series system are established as follows: Each period shall commence July first, one thousand nine hundred seventy-eight. The first period shall expire December thirty-first, one thousand nine hundred seventy-eight; the second, January thirty-first, one thousand nine hundred seventy-nine; the third, February twenty-eighth, one thousand nine hundred seventy-nine; the fourth, March thirty-first, one thousand nine hundred seventy-nine; the fifth, April thirtieth, one thousand nine hundred seventy-nine; the sixth, May thirty-first, one thousand nine hundred seventy-nine; the seventh, June thirtieth, one thousand nine hundred seventy-nine; the eighth, July thirty-first, one thousand nine hundred seventy-nine; the ninth, August thirty-first, one thousand nine hundred seventy-nine; the tenth, September thirtieth, one thousand nine hundred seventy-nine; the eleventh, October thirty-first, one thousand nine hundred seventy-nine; and the twelfth, November thirtieth, one thousand nine hundred seventy-nine.
(4) Motor vehicles, other than those exempted above, not previously registered in this state and operated upon the highways of this state for the first time after the first day of July, one thousand nine hundred seventy-eight, shall be registered for a full twelve-month period without regard to the varying periods of registration provided for during the period of change to the staggered registration system: Provided, That the commissioner may initially register a motor vehicle for less than a twelve-month period when in his opinion such fractional registration shall tend to fulfill the purpose of the monthly series registration system.

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

Application for renewal of a vehicle registration shall be made by the vehicle owner by proper application and payment of taxes and registration fees provided by law.

The department may receive applications for renewal of any vehicle registration and each sheriff may receive applications from residents in his county for renewal of any Class A or G vehicle registration: Provided, That Class A vehicle registrations for trucks with gross weights of not more than eight thousand pounds may not be received for renewal by a sheriff until the first day of January, one thousand nine hundred eighty. The department and each sheriff shall issue the renewals of registration each receives, respectively, in accordance with all of the provisions in this article pertaining to renewal of vehicle registration including, but not limited to, the payment of the taxes and fees required thereunder.

Each sheriff may charge a service fee of one dollar for each renewal of a Class A or G vehicle registration he issues which he shall pay into the county general fund.

On the first day of each month, each sheriff shall pay
over to the commissioner all fees he collected during
the preceding month for renewal of Class A and G
vehicle registrations, except his service fees. Such
payment shall be accompanied by a report showing
the name of the county, the name and address of the
person who obtained the registration and paid the regis-
tration fee therefor, the vehicle registered, the registra-
tion number, the date the registration was issued, the
signature of the sheriff and any other information the
commissioner may reasonably require in order to main-
tain the functions and records of the department. The
commissioner shall deposit all fees he receives from the
sheriffs for renewal of Class A and G vehicle registra-
tions in the state treasury to the credit of the state
road fund as provided in section twenty-one, article
two of this chapter.

The commissioner shall provide each sheriff with the
necessary forms, supplies, registration plates, registra-
tion decals and instructions necessary to enable them to
perform the duties and functions specified in this sec-
tion.

No person may display upon a vehicle a new regis-
tration plate or registration decal prior to the first day
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.

Vehicles subject to registration under the provisions
of this chapter shall be placed in the following classes
for the purpose of registration:

Class A. Motor vehicles of passenger type and trucks
with a gross weight of not more than eight thousand
pounds, other than those operated for compensation;

Class B. Motor vehicles designated as trucks with a
gross weight of more than eight thousand pounds, truck
9 tractors, or road tractors other than those operated for compensation;

11 Class C. All trailers and semitrailers, except those operated for compensation, and except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

16 Class E. Motor vehicles designated as trucks, truck tractors, or road tractors operated for transportation of property for compensation, but being exempt from the operating jurisdiction of the public service commission, and for which a statement of exemption has been received from the public service commission;

22 Class G. Motorcycles;

23 Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the public service commission;

27 Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

30 Class K. Motor vehicles designated as trucks, truck tractors, or road tractors operated for transportation of property for compensation under a certificate of convenience and necessity or a contract carrier permit issued by the public service commission;

35 Class L. All trailers and semitrailers used for transportation of property for compensation;

37 Class R. House trailers;

38 Class S. Special mobile equipment as defined in subdivision (r), section one, article one of this chapter;

40 Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds;

43 Class U. Passenger motor vehicles rented for compensation without a driver;
Class Farm Truck. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of sixty-four thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of (a) the planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil, (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. Such farm truck shall be used only for the transportation of agricultural products so produced by the owner thereof, or for the transportation of agricultural supplies used in such production, or for private passenger use.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

1 The following registration fees for the classes indicated shall be paid annually to the department for the registration of vehicles subject to registration hereunder when equipped with pneumatic tires:

Class A. The registration fee for all motor vehicles of this class shall be as follows:

7 (1) For motor vehicles of a weight of three thousand pounds or less—twenty-five dollars.

9 (2) For motor vehicles of a weight of three thousand and one pounds to four thousand pounds—thirty dollars.

12 (3) For motor vehicles of a weight in excess of four thousand pounds—thirty-six dollars.

14 (4) For motor vehicles designed as trucks with declared gross weights of four thousand pounds or less—twenty-five dollars.

17 (5) For motor vehicles designed as trucks with declared gross weights of four thousand and one pounds to eight thousand pounds—thirty dollars.

For the purpose of determining the weight the actual weight of the vehicle shall be taken: Provided, That
for vehicles owned by churches, or by trustees for
churches, which vehicles are regularly used for trans-
porting parishioners to and from church services, no
license fee shall be charged, but notwithstanding such
exemption, the certificate of registration and license
plates shall be obtained the same as other cards and
plates under this article.

Class B, Class E and Class K. The registration fee
for all motor vehicles of these three classes shall be as
follows:

(1) For declared gross weights of eight thousand
and one pounds to sixteen thousand pounds—twenty-
eight dollars plus five dollars for each one thousand
pounds or fraction thereof that the gross weight of such
vehicle or combination of vehicles exceeds eight thou-
sand pounds.

(2) For declared gross weights greater than sixteen
thousand pounds—seventy-eight dollars and fifty cents
plus ten dollars for each one thousand pounds or fraction
thereof that the gross weight of such vehicle or com-
bination of vehicles exceeds sixteen thousand pounds.

If the declared gross weight of a Class B, Class E or
Class K motor vehicle includes the gross weight of a
Class C or Class L vehicle used in combination with
such Class B, Class E or Class K motor vehicle and the
declared gross weight of the vehicles constituting such
combination exceeds sixteen thousand pounds and the
registration fee prescribed hereunder for such Class C
or Class L vehicle has been paid, there shall be deducted
from the registration fee for such Class B, Class E or
Class K motor vehicle the amount of seventeen dollars
and fifty cents; but, there shall be no such deduction
where the declared gross weight of the vehicles con-
stituting such combination is less than sixteen thousand
and one pounds.

Class C and Class L. The registration fee for all ve-
hicles of these two classes shall be seventeen dollars
and fifty cents.
Class G. The registration fee for each motorcycle shall be eight dollars.

Class H. The registration fee for all vehicles for this class operating entirely within the state shall be five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee shall be fees provided by this section for Class B, Class E and Class K reduced by the amount that the mileage of such vehicles operated in states other than West Virginia bears to the total mileage operated by such vehicles in all states under a formula to be established by the department of motor vehicles.

Class J. The registration fee for all motor vehicles of this class shall be eighty-five dollars. Ambulances and hearses used exclusively as such shall be exempted from the above special fees.

Class R. The registration fee for all vehicles of this class shall be twelve dollars.

Class S. The registration fee for all vehicles of this class shall be seventeen dollars and fifty cents.

Class T. The registration fee for all vehicles of this class shall be eight dollars.

Class U. The registration fee for all vehicles of this class shall be fifty-seven dollars and fifty cents.

Class Farm Truck. The registration fee for all motor vehicles of this class shall be as follows: (1) For farm trucks of declared gross weights of eight thousand and one pounds to sixteen thousand pounds—thirty dollars; (2) for farm trucks of declared gross weights of sixteen thousand and one pounds to twenty-two thousand pounds—sixty dollars; (3) for farm trucks of declared gross weights of twenty-two thousand and one pounds to twenty-eight thousand pounds—ninety dollars; (4) for farm trucks of declared gross weights of twenty-eight thousand and one pounds to thirty-four thousand pounds—one hundred fifteen dollars; (5) for farm trucks of declared gross weights of thirty-four thousand
and one pounds to forty-four thousand pounds—one hundred sixty dollars; (6) for farm trucks of declared gross weights of forty-four thousand and one pounds to fifty-four thousand pounds—two hundred five dollars; and (7) for farm trucks of declared gross weights of fifty-four thousand and one pounds to sixty-four thousand pounds—two hundred fifty dollars.

§17A-10-8. Vehicles exempt from payment of registration fees.

1. The following specified vehicles shall be exempt from the payment of any registration fees:

2. (1) Any vehicle owned or operated by the United States government, the state of West Virginia or any of their political subdivisions. The proper representative of the United States government, the state of West Virginia, or any of their political subdivisions shall make an application for registration for the vehicle and the registration plate or plates issued for the vehicle shall be displayed as provided in this chapter.

3. (2) Any fire vehicle owned or operated by a volunteer fire department organized for the protection of community property.

4. (3) Any ambulance or any other emergency rescue vehicle owned or operated by a nonprofit, charitable organization, and used exclusively for charitable purposes.

5. (4) Any vehicle owned by a disabled veteran as defined by the provisions of Public Law 663 of the 79th Congress of the United States, or Public Law 187 of the 82nd Congress of the United States, or Public Law 77 of the 90th Congress of the United States; except for vehicles used for hire which are owned by disabled veterans.

6. (5) Not more than one vehicle owned by a veteran with a hundred percent total and permanent service-connected disability as certified by the director of the Department of Veterans' Affairs of West Virginia and not used for commercial purposes.
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 directed to execute a compact on behalf of the state of West Virginia with any state of the United States legally 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 traffic violation in a jurisdiction other than his home jurisdiction:

10 (a) Must post collateral or bond to secure appearance for trial at a later date; or
(b) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(c) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license is deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law-enforcement time.

B. It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay
whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions, each as to the other, for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law-enforcement personnel and assist court systems in the efficient disposition of traffic violations.

C. The purpose of this compact is to:

(1) Provide a means through which jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph B above, in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdiction in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

ARTICLE II. DEFINITIONS.

In the nonresident violator compact, the following words have the meaning indicated, unless the context requires otherwise.

(1) "Citation" means any summons, ticket or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.
(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(11) "Terms of the citation" means those options expressly stated upon the citation.

ARTICLE III. PROCEDURE FOR ISSUING JURISDICTION.

A. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver’s license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph B of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist’s signed personal recognizance that he will comply with the terms of the citation.

B. Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

C. Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as mini-
mum requirements for effective processing by the recipient jurisdiction.

D. Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the compact manual.

E. The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

F. The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

G. The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

ARTICLE IV. PROCEDURE FOR HOME JURISDICTION.

A. Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be afforded.

B. The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

ARTICLE V. APPLICABILITY OF OTHER LAWS.

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of
its other laws relating to licenses to drive to any person
or circumstance, or to invalidate or prevent any driver
license agreement or other cooperative arrangement
between a party jurisdiction and a nonparty jurisdiction.

**ARTICLE VI. COMPACT ADMINISTRATOR PROCEDURES.**

A. For the purpose of administering the provisions of
this compact and to serve as a governing body for the
resolution of all matters relating to the operation of this
compact, a board of compact administrators is created.
The board shall be composed of one representative from
each party jurisdiction to be known as the compact ad-
ministrator. The compact administrator shall be appointed
by the jurisdiction executive and will serve and be
subject to removal in accordance with the laws of the
jurisdiction he represents. A compact administrator may
provide for the discharge of his duties and the perform-
ance of his functions as a board member by an alternate.
An alternate may not be entitled to serve unless
written notification of his identity has been given to the
board.

B. Compact administrators shall be entitled to one
vote each on the board of directors. No action of the
board shall be binding unless taken at a meeting at which
a majority of the total number of votes on the board are
cast in favor. Action by the board shall be only at a
meeting at which a majority of the party jurisdictions
are represented.

C. The board shall elect annually, from its member-
ship, a chairman and a vice chairman.

D. The board shall adopt bylaws, not inconsistent with
the provisions of this compact or the laws of a party juris-
diction, for the conduct of its business and shall have
the power to amend and rescind its bylaws.

E. The board may accept for any of its purposes and
functions under this compact any and all donations, and
grants of money, equipment, supplies, materials and
services, conditional or otherwise, from any jurisdiction,
the United States, or any other governmental agency
and may receive, utilize and dispose of the same.
F. The board may contract with, or accept services or personnel from, any government or intergovernmental agency, person, firm or corporation, or any private non-profit organization or institution.

G. The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VII. ENTRY INTO COMPACT AND WITHDRAWAL.

A. This compact shall become effective when it has been adopted by at least two jurisdictions.

B. (1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(a) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(b) Agreement to comply with the terms and provisions of the compact.

(c) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

C. A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall
be directed to the compact administrator of each member
jurisdiction. No withdrawal shall affect the validity of
this compact as to the remaining party jurisdictions.

**Article VIII. Exceptions.**

The provisions of this compact shall not apply to
parking or standing violations, highway weight limit
violations and violations of law governing the transporta-
tion of hazardous materials.

**Article IX. Amendments to the Compact.**

A. This compact may be amended from time to time.
Amendments shall be presented in resolution form to the
chairman of the board of compact administrators and
may be initiated by one or more party jurisdictions.

B. Adoption of an amendment shall require endorse-
ment of all party jurisdictions and shall become effective
thirty days after the date of the last endorsement.

C. Failure of a party jurisdiction to respond to the
compact chairman within one hundred and twenty days
after receipt of the proposed amendment shall constitute
endorsement.

**Article X. Construction and Severability.**

This compact shall be liberally construed so as to
effectuate the purposes stated herein. The provisions of
this compact shall be severable and if any phrase, clause,
sentence or provision of this compact is declared to be
contrary to the constitution of any party jurisdiction or of
the United States or the applicability thereof to any gov-
ernment, agency, person or circumstance, the compact
shall not be affected thereby. If this compact shall be
held contrary to the constitution of any jurisdiction party
thereto, the compact shall remain in full force and effect
as to the remaining jurisdictions and in full force and
effect as to the jurisdiction affected as to all severable
matters.

**Article XI.**

This compact shall be known as the “Nonresident
Violator Compact.”
§17B-1C-2. Definitions.

1 (1) As used in this article, the term "licensing authority," with reference to this state, means the department of motor vehicles. The department shall furnish to the licensing authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III and IV and shall maintain and periodically distribute to every court of record and magistrate, every sheriff and municipal chief of police and the department of public safety a current list of all states that have executed the compacts as provided in this article.

2 (2) As used in this article, the term "jurisdiction executive," with reference to this state, means the governor of this state.

3 (3) As used in Section C, Article III of section one of this article, the term "appropriate official," with reference to this state, refers to a magistrate, his clerk, or a judge or clerk of a court of record.

§17B-1C-3. Compact administrator.

1 The compact administrator, as provided for in Article VI, section one of this article, is the commissioner of the department of motor vehicles. The commissioner shall not be entitled to any additional compensation for service as administrator, but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in discharging the duties and responsibilities as administrator in the same manner as for other such expenses incurred in discharging any other duties or responsibilities 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 have entered into nonresident violator compacts which are similar in purpose to the compact set forth in section one of this article, the governor is authorized to execute a nonresident violator compact on behalf of this state with each of these jurisdictions.
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.

On and after the first day of July, one thousand nine hundred seventy-eight, the department of motor vehicles shall not issue an operator's or chauffeur's license to a person who holds a valid license to operate a motor vehicle issued by another state or jurisdiction unless or until the applicant shall surrender to the department the foreign license, or such person has signed and submitted to the department an affidavit to the effect that he has surrendered all valid licenses issued to him by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be returned to the department of motor vehicles or similar agency in that state or jurisdiction together with a notice that the person who
surrendered the license has been licensed in this state. It
shall be unlawful for a person to possess more than one
valid driver's license at any time: Provided, That a person
may retain a license issued by another state or jurisdiction
if the license was issued for commercial purposes only
and is required for operation of a commercial vehicle in
that state or jurisdiction.

All other applicable provisions of this article relating
to issuance, fees, expiration and renewal of licenses, and
driver examination of applicants shall also apply to this
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 chauf­
feur'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 RE­
NEWAL.

§17B-2-6. Application for license or instruction permit; fee to
accompany application.

Every application for an instruction permit or for an
operator's or chauffeur's license shall be made upon a form
Every said application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as an operator or chauffeur, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal, and such other pertinent information 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.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that (1) it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, (2) it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid, and (3) it shall be permissible to use studded tires during the period from November first of each year until April fifteenth of the following year: Provided, That in the interest of highway maintenance, no vehicle moved on a highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than forty pounds per square inch.

(d) No studded tires or chains shall be sold or used within the state of West Virginia which do not meet the specifications established by the rules and regulations which the commissioner of highways shall promulgate, but the commissioner may not by those rules and regulations prohibit the use of studded tires or chains within the state.

(e) The commissioner of highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon the highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm
machinery, the operation of which upon a highway would 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.

The provisions of this article shall apply to the driver and owner of any vehicle of a type subject to registration under the motor vehicle laws of this state which is in any manner involved in an accident upon any street or highway within this state which accident has resulted in damage to the property of any one person in excess of two hundred fifty dollars or in bodily injury to or in the death of any person in respect to which accident report must be made to the commissioner under the laws of this state.
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.


§8-19-10. 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.


§8-19-16. 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 article, any municipality may acquire, construct, establish, extend, equip, repair, maintain and operate, or lease to others for operation, a waterworks system, or construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric...
power system, within the corporate limits of said municipality and within the area extending twenty miles beyond the corporate limits of such municipality, notwithstanding any provision or limitation to the contrary in any other law or charter: Provided, That such municipality shall not serve or supply water facilities or electric power facilities or services within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system.

When used in this article, the term "electric power system" means a system or facility which produces electric power in its entirety or any integral part thereof, including, but not limited to, power lines and wires, power poles, guy wires, insulators, transformers, generators, cables, power line towers, voltage regulators, meters, power substations, machinery and all other facilities necessary, appropriate, useful or convenient or incidental in connection with or to an electric power supply system.

**PART III. RIGHT OF EMINENT DOMAIN.**

**§8-19-3. Right of eminent domain; limitations.**

For the purpose of acquiring, constructing, establishing or extending any waterworks system, or for the purpose of constructing any additions, betterments or improvements to any waterworks or electric power system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any waterworks or electric power system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That
such right of eminent domain for the acquisition of a complete privately owned waterworks system shall not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of said municipality a municipal waterworks or electric power system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks or electric power system in such municipality or within the proposed extension of such system, unless a certificate of public convenience and necessity therefor shall have 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.

Whenever a municipality shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and shall, by ordinance, provide for the issuance of revenue bonds under the provisions of this article, which ordinance shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment, and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated in such manner and upon such terms as the governing body of such municipality may by ordinance specify. All such bonds and the interest thereon, and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at not more than eight percent per annum, payable semiannually, and shall be payable at such times, not exceeding forty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Such ordinance shall also declare that a statutory mortgage lien shall exist upon the
property so to be acquired, constructed, established, extended
or equipped, fix minimum rates or charges for water to be col-
lected prior to the payment of all of said bonds and shall pledge
the revenues derived from the waterworks or electric power
system for the purpose of paying such bonds and interest there-
on, which pledge shall definitely fix and determine the amount
of revenues which shall be necessary to be set apart and
applied to the payment of the principal of and interest
upon the bonds and the proportion of the balance of such
revenues, which are to be set aside as a proper and adequate
depreciation account, and the remainder shall be set aside
for the reasonable and proper maintenance and operation
thereof. The rates or charges to be charged for the services
from such waterworks or electric power system shall be
sufficient at all times to provide for the payment of interest
upon all bonds and to create a sinking fund to pay the
principal thereof as and when the same become due, and
reasonable reserves therefor, and to provide for the repair,
maintenance and operation of the waterworks or electric
power system, and to provide an adequate depreciation fund,
and to make any other payments which shall be required or
provided for in the ordinance authorizing the issuance of
said bonds.

§8-19-7. Bonds payable solely from revenues; not to constitute
municipal indebtedness.

Bonds issued under the provisions of this article shall be
payable solely from the revenues derived from such water-
works or electric power system, and such bonds shall not
in any event constitute an indebtedness of such municipality
within the meaning of any constitutional or statutory pro-
vision or limitation, and it shall be plainly stated on the
face of each bond that the same has been issued under the
provisions of this article, and that it does not constitute an
indebtedness of such municipality within any constitutional
or statutory provision or limitation. Subject to the provisions
of subsection (b), section twelve of this article, the ordinance
authorizing the issuance of the bonds may contain such cove-
nants and restrictions upon the issuance of additional revenue
bonds thereafter as may be deemed necessary or advisable for

There shall be and there is hereby created and granted a statutory mortgage lien upon the waterworks or electric power system so acquired, constructed, established, equipped, extended or improved from the proceeds of bonds hereby authorized to be issued, which shall exist in favor of the holder of said bonds and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such waterworks or electric power system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds.

Any municipality in acquiring an existing waterworks system or in improving an existing waterworks or electric power system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section six hereof. Any revenue bonds so issued in payment for such an existing waterworks or electric power system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired or improved; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, such remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.


Any ordinance authorizing the issuance of bonds, hereunder, or any trust indenture with any banking institution or trust company within or without the state for the security of said bonds, which any such municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of such bonds as to:

(a) The purpose or purposes to which the proceeds of sale of such bonds or the revenues derived from said waterworks or electric power system may be applied and the securing, use and disposition thereof, including, if deemed
desirable, the appointment of a trustee or depository for any of such funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such waterworks or electric power system, including any part thereof heretofore or hereafter acquired, constructed, established, extended or equipped or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for such reserve or other funds as may be deemed necessary or desirable;

(c) The fixing, establishing and collecting of such rates or charges for the use of the services and facilities of the waterworks or electric power system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended or equipped and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such waterworks or electric power system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such waterworks or electric power system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of such bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of the waterworks or electric power system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such waterworks or electric power system;

(e) Subject to the provisions of subsection (b), section twelve of this article, limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such waterworks or electric power system, and the rank or priority, as to lien and source and security for payment from the revenues of such waterworks or electric power system, between bonds payable from such revenues;

(f) The manner and terms upon which all bonds and other
obligations issued hereunder may be declared immediately
due and payable upon the happening of a default in the pay-
ment of the principal of or interest thereon, or in the
performance of any covenant or agreement with bondholders,
and the manner and terms upon which such defaults may be
declared cured and the acceleration of the maturity of such
bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and opera-
tion of such waterworks or electric power system and restric-
tions and limitations upon expenditures for such purposes,
and the manner of adoption, modification, repeal or amend-
ment thereof, including the approval of such budgets by
consulting engineers designated by holders of bonds issued
hereunder;

(h) The amounts of insurance to be maintained upon such
waterworks or electric power system, or any part thereof,
and the use and disposition of the proceeds of any insur-
ance; and

(i) The keeping of books of account, relating to such
undertakings and the audit and inspection thereof, and the
furnishing to the holders of bonds issued hereunder or their
representatives, reports prepared, certified or approved by
accountants designated or approved by the holders of bonds
issued hereunder.

Any such ordinance or trust indenture may also contain
such other additional covenants as shall be deemed necessary
or desirable for the security of the holders of bonds issued
hereunder, notwithstanding that such other covenants are not
expressly enumerated above, it being the intention hereof to
grant to municipalities plenary power and authority to make
any and all covenants or agreements necessary in order to
secure greater marketability for bonds issued hereunder as
fully and to the same extent as such covenants or agreements
could be made by a private corporation rendering similar
services and facilities and to grant to municipalities full and
complete power and authority to enter into any contracts,
covenants or agreements with holders of bonds issued here-
under not inconsistent with the constitution of this state.
§8-19-10. Operating contract.

Any such municipality may enter into contracts or agreements with any persons for (1) the repair, maintenance and operation and management of the facilities and properties of said waterworks or electric power system, or any part thereof, or (2) the collection and disbursement of the income and revenues therefor, or for both (1) and (2), for such period of time and under such terms and conditions as shall be agreed upon between such municipality and such persons. Any such municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the municipality as long as any of said bonds, or interest 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.

Rates or charges for water fixed precedent to the issuance of bonds shall not be reduced until all of said bonds shall have been fully paid, and may, whenever necessary, be increased in amounts sufficient to provide for the payment of the principal of and interest upon such bonds, and to provide proper funds for the depreciation account and repair, maintenance and operation charges. If any surplus shall be accumulated in the repair, maintenance and operation fund which shall be in excess of the cost of repairing, maintaining and operating the waterworks or electric power system during the remainder of the fiscal year then current, and the cost of repairing, maintaining and operating the said waterworks or electric power system during the fiscal year then next ensuing, then any such excess may be transferred to either the depreciation account or to the bond and interest redemption account, and if any surplus shall be accumulated in the depreciation account over and above that which the municipality shall find may be necessary for the probable replacements which may be needed during the then present fiscal year, and the next ensuing fiscal year, such excess may be transferred to the bond and interest redemption account, and if any surplus shall exist in the bond and interest
redemption account the same shall be applied insofar as possible in the purchase or retirement of outstanding revenue bonds payable from such account.

§8-19-12. Service charges; sinking fund; amount of bonds; additional bonds; surplus.

(a) Every municipality issuing bonds under the provisions of this article shall thereafter, so long as any of such bonds remain outstanding, repair, maintain and operate its waterworks or electric power system as hereinafter provided and shall charge, collect and account for revenues therefrom as will be sufficient to pay all repair, maintenance and operation costs, provide a depreciation fund, retire the bonds and pay the interest requirements of the bonds as the same become due. The ordinance pursuant to which any such bonds are issued shall pledge the revenues derived from the waterworks or electric power system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts as and when so set apart into said special fund for the bond requirements shall be remitted to the state sinking fund commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which such bonds have been issued. The bonds hereby authorized shall be issued in such amounts as may be determined necessary to provide funds for the purpose for which they are authorized, and in determining the amount of bonds to be issued it shall be proper to include interest on the bonds for a period not beyond six months from the estimated date of completion.

(b) If the proceeds of the bonds, because of error or otherwise, shall be less than the cost of the property or undertaking for which authorized, additional bonds may be issued to provide the amount of such deficit and such additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority over the bonds first authorized and issued.

(c) If the proceeds of the bonds shall exceed the cost of the property or undertaking, the surplus shall be converted
into the fund for the retirement of the bonds and payment of
the interest thereon.

§8-19-13. Discontinuance of water or electric power service for
  nonpayment of rates or charges.

Any such municipality shall also have plenary power and
authority, and may covenant with the holders of any bonds
issued hereunder, to shut off and discontinue the supplying
of the water or electric power service of said waterworks or
electric power system for the nonpayment of the rates or
charges for said water or electric power service.


Whenever any municipality shall now or hereafter own
and operate a waterworks or electric power system, whether
acquired, constructed, established, extended or equipped under
the provisions of this article or not, and shall desire to con-
struct additions, betterments or improvements thereto, it may
issue revenue bonds under the provisions of this article to
pay for the same, and the procedure therefor, including the
fixing of rates or charges and the computation of the amount
thereof, and the power and authority in connection there-
with, shall be the same as in this article provided for the
issuance of bonds for the acquisition, construction, establish-
ment, extension or equipment of a waterworks system in
a municipality which has not heretofore owned and operated
a waterworks system: Provided, That nothing in this article
shall be construed as authorizing any municipality to im-
pair or commit a breach of the obligation of any valid
lien or contract created or entered into by it, the inten-
tion being to authorize the pledging, setting aside and segre-
gation of such revenues for the construction of such addi-
tions, betterments or improvements only where and to the
extent consistent with outstanding obligations of such munici-
pality, and in accordance with the provisions of this article.


Any municipality operating a waterworks or electric power
system under the provisions of this article shall set up and
maintain a proper system of accounts in accordance with
the requirements of the public service commission, showing
the amount of revenues received from such waterworks or
electric power system and the application of the same. At
least once each year such municipality shall cause such
accounts to be properly audited, and a report of such audit
shall be open to the public for inspection at all reasonable
times.

§8-19-16. Protection and enforcement of rights of bondholders,
etc.; receivership.

Any holder of any bonds issued under the provisions of
this article or of any coupons representing interest accrued
thereon may by civil action, mandamus or other proper
proceeding enforce the statutory mortgage lien created and
granted in section eight of this article, protect and enforce
any and all rights granted hereunder or under any such
ordinance or trust indenture, and may enforce and compel
performance of all duties required by the provisions of this
article or by any such ordinance or trust indenture to be per-
formed by the municipality, or by the governing body or
any officer, including the making and collecting of reasonable
and sufficient rates or charges for services rendered by the
waterworks or electric power system. If there be default in
the payment of the principal of or interest upon any of
such bonds, or of both principal and interest, any court
having jurisdiction shall appoint a receiver to administer
said waterworks or electric power system on behalf of the
municipality, and the bondholders or trustee, or both, with
power to charge and collect rates or charges sufficient to
provide for the retirement of the bonds and pay the interest
thereon, and for the payment of the repair, maintenance and
operation expenses, and such receiver shall apply the revenues
in conformity with the provisions of this article and the
ordinance pursuant to which such bonds have been issued
or any trust indenture, or both.
§8-19-17. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

Any municipality is hereby empowered and authorized to accept grants, and procure loans or temporary advances, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of waterworks systems and the construction of additions, betterments and improvements to existing waterworks systems or to existing electric power systems from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article and to enter into the necessary contracts and agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article or the revenues of the municipal waterworks or electric power system so recited 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.

This article shall, without reference to any other statute or charter provision, be deemed full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to a waterworks system or for the construction of any additions, betterments or improvements to an existing
electric power system as herein provided and for the issuance and sale of the bonds by this article authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under the provisions of this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds shall be required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the state department of health shall remain unaffected by this article.

This article shall be construed as cumulative authority for any undertaking herein authorized, and shall not be construed 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.

As an alternative to the procedures hereinabove provided, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a waterworks system or to construct, maintain and operate additions, betterments and improvements to an existing waterworks system or an existing electric power system, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.
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-1. Legislative findings and purpose. The Legislature hereby finds and declares that the lack of safe, decent, sanitary and affordable dwellings is one of the most serious problems facing this state and that a major contributing factor to this problem is the deterioration of the state's existing housing stock; that these deteriorating dwellings exist in both the urban and rural areas of the state; and that a disproportionate number of homeowners residing in these deteriorating dwellings are older, less affluent and otherwise less able to afford the expense of the remodeling, repairing and rehabilitating of their residences necessary to maintain such residences in a sanitary, safe and decent condition; that because of their lack of acceptable loan collateral, the age of their residences and the location and age of the neighborhoods in which their residences are located, many of such homeowners have not been able to borrow funds necessary to effect such remodeling, repair and rehabilitation; and that some of such homeowners who
have been able to obtain funds for such purposes have been able to do so only upon rates of interest and upon other terms and conditions which are particularly onerous to such homeowners.

(b) The Legislature further finds and declares that the assistance authorized in this article will provide, and will encourage private lenders to provide, to such homeowners, more readily and at rates of interest and upon other terms and conditions significantly more favorable to such homeowners, the loans necessary to finance the cost of such remodeling, repair and rehabilitation.

(c) The Legislature further finds and declares that the powers granted to municipalities and counties in this article will enable them to maximize the use of federal programs for housing rehabilitation.

(d) The Legislature further finds and declares that it is manifestly in the public interest to foster the pride, self-respect and esteem incident to home ownership and to encourage and assist in the maintenance of residences in a safe, decent and sanitary condition; that without the assistance authorized in this article, there will be continued deterioration of housing with the resultant proliferation of slums, higher crime rates and general decline in civic pride, public spirit and the quality of life, with all of the public cost, direct and indirect, attendant thereon; and that accordingly by providing such assistance, any municipality or county will be acting in all respects for the benefit of the people of the state of West Virginia and shall thereby serve a public purpose in improving and otherwise promoting their health, welfare and prosperity.


As used in this article, unless the context otherwise requires:

(1) “Eligible dwelling” means real estate upon which there is located a structure designed primarily for residential housing and consisting of dwelling units for not more than four families: Provided, That all occupancy
thereof shall be limited to persons and families who would qualify as eligible residents.

(2) "Eligible resident" means a person or family residing in an eligible dwelling owned by such person or family situated within the boundaries of a municipality or county, irrespective of race, creed, national origin or sex, with respect to whom it is determined by the governing body of such municipality or county that (a) such person or family because of financial condition, age, infirmity, family size or other reasons, is unable to obtain, on suitable terms and condition, loans or other credit necessary for the rehabilitation of such eligible dwelling, and hence requires the assistance as provided in this article, (b) such rehabilitation is necessary to place such eligible dwelling in a safe, sanitary and decent condition, and (c) the assistance as authorized in this article shall make financing available to such person or family, or enable such person or family to obtain such financing on terms and conditions substantially more favorable to such person or family than would otherwise be available.

(3) "Rehabilitation" means a specific work of improvement within a municipality or county undertaken primarily to remodel, repair or rehabilitate an eligible dwelling occupied by an eligible resident as his principal residence.


(a) Any municipality or county shall have plenary power and authority, by charter provision, ordinance or resolution, to establish a special fund of moneys made available by appropriation, grant, contribution, loan or otherwise, to be known as the neighborhood rehabilitation fund of such municipality or county, to be governed, administered and accounted for by the governing body of such municipality or county, as a special purpose account, separate and distinct from any other moneys, fund or funds owned by such municipality or county.

(b) The governing body of any municipality or county may, from time to time, by resolution, establish criteria
which shall govern the determination of persons and families who qualify as eligible residents.

(c) The purpose of such neighborhood rehabilitation fund shall be to provide funds for the making of grants and loans, or to guarantee the repayment of loans made by private lenders, to eligible residents of such municipality or county, the proceeds of which loans are to be used exclusively for rehabilitation.

(d) Such loans shall be made or guaranteed and grants made only upon determination by the governing body of such municipality or county, or by a board or commission appointed for such purpose by such governing body, that the recipients are eligible residents, that the proceeds of the loan or grant shall be used for rehabilitation and that loans or grants to such eligible recipients for rehabilitation are not otherwise available upon reasonably equivalent terms and conditions.

(e) No loan shall be made or guaranteed by such municipality or county except in accordance with a written agreement between such municipality or county, the eligible resident and in the case of a guaranteed loan the lender making such loan, which agreement shall provide, without limitation, that:

(1) The proceeds of such loan shall be used exclusively for rehabilitation;

(2) The loan shall be in such principal amount, repayable in such number of consecutive and substantially equal monthly installments at such annual rate of interest and shall be secured in such manner as specified in such agreement;

(3) In the case of a guaranteed loan, such municipality or county shall be obligated to repay, from the neighborhood rehabilitation fund established in accordance with this article, any installment or installments of such loan as shall be in default from time to time in accordance with the provisions of such agreement;

(4) In the event an eligible resident defaults on such loan made by such municipality or county, or in the
(f) Nothing in this article contained shall be so construed as to authorize any municipality or county to make any contract or incur any obligation or liability of any kind or nature, except such as shall be discharged or payable solely from the funds on deposit in such neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

In addition to all other powers and rights of a municipality or county, any municipality or county shall have plenary power and authority, at the request of eligible residents, to inspect the residences of such eligible residents, to make recommendations concerning rehabilitation and to provide all manner of technical services and assistance in the planning, processing and design of needed rehabilitation.

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.


§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

In every municipality in which there is a policemen's pension and relief fund or a firemen's pension and relief fund, or both, the same shall be maintained as follows: The governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting (a) the amount of the contributions received during such year from the members of the respective paid police department or paid fire department, and (b) in the case of the policemen's pension and relief fund, the arrest fee of one dollar as provided for in section twenty of this article, provide funds equal to the sum of (1) the full amount of estimated expenditures of the boards of trustees of the respective funds, and (2) an additional amount equal to ten percent of such estimated expenditures, said ten percent amount to be taken, accumulated and invested, if possible, as surplus reserve: Provided, That in no event shall such levy for each of the respective boards of trustees be less than one cent nor more than eight cents on each one hundred dollars of all real and personal property as listed for taxation in such municipality.
The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of such municipality; and such levies shall supersede and if necessary exclude levies for other purposes if such priority or exclusion is necessary under limitations upon taxes or tax levies imposed by law.

Such public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by said trustees.

In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any such fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of six percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen’s pension and relief fund, if collected from a policeman, and of the firemen’s pension and relief fund, if collected from a fireman.

Any member of a paid police or fire department who is removed or discharged or who before retirement on any retirement pension or disability pension severs his connection with said department, provided he has served two full years or more, whether or not consecutive, shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest. In the event such refund is made and such member subsequently reenters the department no credit shall be allowed him for any former service, unless any such member of a paid police or fire department repays to the pension and relief fund all sums refunded to him within one year from the date he reenters the department with interest at the rate of six percent per annum: Provided, That any member who, on or before June three, one thousand nine hundred fifty-five, reentered the paid police or fire department shall be allowed credit for any
former service in the same department reentered if he, within one year from said June three, one thousand nine hundred fifty-five, repaid all sums withdrawn or refunded to him with interest at the rate of six percent per annum, but in no case shall interest be charged for more than three years. Any probationary member of a paid police or fire department who is not given an absolute appointment at the end of his probationary period shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest.

§8-22-22. Investment of funds; exercise of judgment in making investments; actuarial studies required; annual report.

The board of trustees shall invest any moneys received by it in the following classes of securities and accounts and not otherwise, which securities and accounts mature on such dates as will make available such amount of cash as is required:

(a) Obligations of the United States or any agency thereof, which are guaranteed by the United States or for which the full faith and credit of the United States is pledged for the payment of principal and interest, or any obligation of an agency of the United States designated in section nine, article six, chapter twelve of this code.

(b) Certificates of deposit secured by (1) obligations as listed in subdivision (a) of this section, (2) general obligation or revenue bonds of the state of West Virginia, (3) general obligation bonds of any other state, (4) general obligation bonds of any county in this state or of any county board of education in this state, or (5) general obligation bonds of any municipality in this state.

(c) Interest bearing savings accounts or certificates of deposit in banking institutions, the accounts of which are insured by the federal deposit insurance corporation, or interest bearing savings accounts in federal savings and loan associations, the accounts of which are insured by the federal savings and loan insurance corporation, or interest bearing savings accounts in building and loan associations, the accounts of which are insured by the federal savings and loan insurance corporation:

Provided. That an investment in any such savings account
in excess of the amount thereof which would be insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, as the case may be, shall not be made unless such banking institution, federal savings and loan association or building and loan association provides adequate bond or other adequate security for the amount of the proposed municipal investment in excess of such insurance coverage, the adequacy of any such bond or other security to be determined by the treasurer of such municipality.

(d) Any security that is secured by a first lien deed of trust or mortgage on real property situate within this state: Provided, That the value of the securing of first lien deed of trust or mortgage shall be at least twice the amount loaned thereon, based on a sound appraisal by a competent appraiser and duly certified by him or federally insured: Provided, however, That the interest for such loan of money at a rate expressed in terms of dollars upon one hundred dollars for a year, shall be not less than the monthly index of long-term government bonds yields for the second preceding calendar month plus an additional one percent a year rounded off to the nearest quarter of one percent a year.

Any investment made under this article shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The board of trustees shall cause an actuarial study of the fund to be completed before the first day of July, one thousand nine hundred seventy-nine, and each eight years thereafter: Provided, That any board which has caused an actuarial study of such fund to be completed within four years prior to the effective date of this section shall be required to have its next actuarial study completed before the first day of July, one thousand nine hundred eighty-four. The actuarial study shall be performed by an actuary who is a member of the society of actuaries.
The board of trustees shall make a report to the governing body of the municipality on the condition of its fund on the thirty-first day of December of each year.


(a) In case:

(1) Any member of a paid police or fire department who has been in continuous service for more than five years dies, from any cause other than as specified in subsection (b) of this section before retirement on a disability pension under the provisions of section twenty-four of this article or a retirement pension under the provisions of subsection (a) of section twenty-five of this article, leaving in either case surviving a dependent spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(2) Any former member of any such department who is on a disability pension under the provisions of section twenty-four of this article, or has attained the age of fifty years and is receiving or is entitled to receive retirement pension benefits under the provisions of subsection (a) of section twenty-five of this article, shall die, from any cause other than as specified in subsection (b) of this section leaving in either case surviving a dependent spouse to whom the marriage took place prior to the date of such member’s retirement on a disability pension or a retirement pension, or any dependent child or children under the age of eighteen years who were born prior to or within ten months after the date of such member’s retirement on a disability pension or a retirement pension, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years; or

(3) Any former member of any such department who has retired under the provisions of subsection (a) of section twenty-five of this article, shall die before attaining the age of fifty years, from any cause other than as specified in subsection (b) of this section leaving surviving a dependent spouse, or any dependent child...
or children under the age of eighteen years, or dependent father
or mother or both, or any dependent brothers or sisters or both
under the age of eighteen years; then in any of the cases set
forth above in (1), (2) and (3), the board of trustees of such
pension and relief fund shall, immediately following the
death of such member, pay to or for each of such entitled
surviving dependents the following pension benefits, viz.: To
such dependent spouse, until death or remarriage, a sum per
month equal to thirty percent of such member’s average
monthly salary or compensation received during the three
fiscal years, not necessarily consecutive, in which such mem-
ber received his highest salary or compensation while a
member of the department, hereinafter for convenience re-
ferred to in this section as “monthly average,” or an amount
of one hundred dollars per month, whichever shall be greater;
to each such dependent child a sum per month equal to
ten percent of such monthly average, or the sum of thirty
dollars per month for each such child, whichever shall be
greater, until such child shall attain the age of eighteen years
or marry, whichever first occurs; to each such dependent
orphaned child a sum per month equal to fifteen percent of
such monthly average, or the sum of forty-five dollars per
month for each such child, whichever shall be greater, until
such child shall attain the age of eighteen years or marry,
whichever first occurs; to each such dependent father or
mother a sum per month for each equal to ten percent of
such monthly average, or the sum of thirty dollars per month
for each such father and mother, whichever shall be greater;
to each such dependent brother or sister the sum of five
dollars per month until such individual shall attain the age
of eighteen years or marry, whichever first occurs, but in
no event shall the aggregate amount paid to such brothers
and sisters exceed thirty dollars per month; but if at any
time, because of the number of dependents, all such dependents
cannot be paid in full as herein provided, then each dependent
shall receive his pro rata share of such payments: Provided,
That in no case shall the payments to the surviving spouse
and children be cut below sixty-five percent of the total
amount to be paid to all dependents.

(b) The dependent spouse, child or children, or dependent
father or mother, or dependent brothers or sisters, of any such
member who shall die by reason of service rendered in the
performance of such member's duties shall, regardless of the
length of such member's service and irrespective of whether
such member was or was not entitled to receive or was or was
not receiving a disability pension or temporary disability pay-
ments at the time of his death, receive the death benefits
provided for in subsection (a) of this section, and if such
member had less than three years' service at the time of his
death, the monthly average shall be computed on the basis
of the actual number of years of service.

(c) The provisions of this section shall not be construed
as creating or establishing any contractual or vested rights
in favor of any individual who may be or become qualified
as a beneficiary of the death benefits herein authorized to be
made, all the provisions hereof and benefits provided for
hereunder being expressly subject to such subsequent legisla-
tive enactments as may provide for any change, modification or
elimination of the beneficiaries or benefits specified herein.

CHAPTER 75
(H. B. 1252—By Mr. Balloux 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 granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

   (1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

   (2) Sign and execute in the name of the state by the "department of natural resources" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

   (3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

   (4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

   (5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

   (6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the natural resources commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the natural resources commission before such season and bag limits are fixed by it;
(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours’ notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the state capitol;

(8) Supervise the fiscal affairs and responsibilities of the department;

(9) Designate such localities as he shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the “department of natural resources” by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of natural resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;

(c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public
may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules and regulations issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha state forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he deems
appropriate, but the sale price shall not be less than the
appraised value of the timber advertised. No contract for
sale of timber made pursuant to this section shall extend for a
period of more than ten years. And all contracts heretofore en-
tered into by the state for the sale of timber shall not be vali-
dated by this section if the same be otherwise invalid. The pro-
ceeds arising from the sale of the timber so sold, shall be paid
to the treasurer of the state of West Virginia, and shall be cred-
ited to the department and used exclusively for the purposes
of this chapter: Provided, That nothing contained herein shall
prohibit the sale of timber which otherwise would be removed
from rights-of-way necessary for and strictly incidental to the
evolution of minerals;

(14) Sell or lease, with the approval in writing of the gover-
nor, coal, oil, gas, sand, gravel and any other minerals that may
be found in the lands under the jurisdiction and control of the
director, except those lands that are designated as state parks.
The director, before making sale or lease thereof, shall receive
sealed bids therefor, after notice by publication as a Class II
legal advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication area
for such publication shall be each county in which such lands
are located. The minerals so advertised shall be sold or leased
to the highest responsible bidder, who shall give bond for the
proper performance of the sales contract or lease as the director
shall designate; but the director shall have the right to reject
any and all bids and to readvertise the bids. The proceeds aris-
ing from any such sale or lease shall be paid to the treasurer of
the state of West Virginia and shall be credited to the depart-
ment and used exclusively for the purposes of this chapter;

(15) Exercise the powers granted by this chapter for
the protection of forests, and regulate fires and smoking in
the woods or in their proximity at such times and in such
localities as may be necessary to reduce the danger of
forest fires;

(16) Cooperate with departments and agencies of state,
local and federal governments in the conservation of natural
resources and the beautification of the state;

(17) Report to the governor each year all information
relative to the operation and functions of his department
and he shall make such other reports and recommendations as
may be required by the governor, including an annual financial
report covering all receipts and disbursements of the de-
partment of each fiscal year, and he shall deliver such
report to the governor on or before the first day of Decem-
ber next after the end of the fiscal year so covered. A
copy of such report shall be delivered to each house of
the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all pro-
ceedings, record and file all bonds and contracts taken or
entered into, and assume responsibility for the custody and
preservation of all papers and documents pertaining to his
office, except as otherwise provided by law;

(19) Offer and pay, in his discretion, rewards for in-
formation respecting the violation, or for the apprehension
and conviction of any violators, of any of the provisions of
this chapter;

(20) Require such reports as he may deem to be neces-
sary from any person issued a license or permit under the
provisions of this chapter, but no person shall be required
to disclose secret processes or confidential data of competitive
significance;

(21) Purchase as provided by law all equipment neces-
sary for the conduct of his department;

(22) Conduct and encourage research designed to further
new and more extensive uses of the natural resources of this
state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and
private organizations or groups in their efforts to publicize
the attractions of the state;

(24) Accept and expend, without the necessity of ap-
propriation by the Legislature, any gift or grant of money
made to the department for any and all purposes specified in
this chapter, and he shall account for and report on all
such receipts and expenditures to the governor;
(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parts as he deems advisable;

(26) Maintain in his office at all times, properly indexed by subject matter, and also, in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his office, except the power to execute contracts, to appointees and employees of the department, who shall act under the direction and supervision of the director and for whose acts he shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the department in moving his household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months;

(30) Promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him by the provisions of this chapter and take such other steps as may be necessary in his discretion for the proper and effective enforcement of the provisions of this chapter: Provided, That all rules and regulations relating to articles five and five-a of this chapter shall be promulgated by the water resources board; and
(31) Regulate and set the digging season of native, wild ginseng: Provided, That the digging season for wild, native ginseng be set between the first day of December and the fifteenth day of November of the following year.

CHAPTER 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.

No person, except those legally licensed to operate private game preserves for the purpose of propagating game for commercial purposes, and those legally licensed to propagate or sell fish, amphibians and other forms of aquatic life, shall purchase or offer to purchase, sell or offer to sell, expose for sale, or have in his possession for the purpose of sale any wildlife, or part thereof, which has been designated as game animals, fur-bearing animals, game birds, game fish or amphibians, or any of the song or insectivorous birds of the state, or any other species of wildlife which the director may designate: Provided, however, That pelts of game or fur-bearing animals taken during the legal season may be sold:
Provided further, That hide, head, antlers and feet of a legally killed deer and the hide, head, skull and feet of a legally killed black bear may be sold.

No person, including a common carrier, shall transport, carry or convey, or receive for such purposes any wildlife, the sale of which is prohibited, if such person knows or has reason to believe that such wildlife has been or is to be sold in violation of this section.

The selling or exposing for sale, having in possession for sale, transporting or carrying in violation of this section each constitute a separate misdemeanor offense. Notwithstanding the provisions of this or any other section of this chapter, any game birds or game bird meats sold by licensed retailers may be served at any hotel, restaurant or other licensed eating place in this state.
but in any event within one hour and before transporting or removing the carcass in any manner from where it was killed, complete and attach thereto the game tag supplied with his or her hunting license. The game tag shall remain on the carcass until it is dressed for consumption.

If such wild turkey or deer has been lawfully killed by a person not required to secure a license, or by a person who has previously killed another species of game bird or game animal for which a game tag is required, or by a person who has lost the tag supplied with his or her license, such person shall make and attach a tag to the carcass within the time specified after such killing. The tag shall bear in plain English the name and address of the hunter, and the date of killing, or, if holding a license, the license number and the date and county where the game was killed.

The carcass of such wild turkey or deer shall be delivered to a conservation officer or an official checking station for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

Every failure to have said tag or tags attached, or removing or transporting such animal in any manner, or failure to deliver the carcass to a conservation officer or other officer specified in this section or an official checking station for checking, as herein provided, shall subject the person so neglecting to the penalties provided in this 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 revoked, who hunts or fishes during the period of revocation, shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not less than ten days nor more than one hundred days, or both fined and 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.

The director of the department of natural resources in cooperation with the commissioner of highways, the department of public safety, the United States forestry service, and other local, state and federal law-enforcement agencies, shall be responsible for the administration and enforcement of all laws and regulations relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys and other public areas and ways of the state and shall make recommendations to the director from time to time concerning means and methods of accomplishing state highway beautification consistent with the provisions of this chapter.

It shall be unlawful to place, deposit, dump or throw, or cause to be placed, deposited, dumped or thrown, any litter, garbage, refuse, trash, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter in or upon any public or private highway, road, street or alley, or upon the surface of any land within one hundred yards thereof without the consent of the owner, or in or upon any private property into or upon which the public is admitted by easement or license, or upon any private property without the consent of the owner, or in or upon any public park or other public property other than in such place as may be set aside for such purpose by the governing body having charge thereof.

If any such materials be thrown, cast, dumped or discharged from a motor vehicle in violation of the provisions hereof, such action shall be deemed prima facie evidence
that the owner and driver of such motor vehicle intended
to violate the provisions of this section.

The commissioner of motor vehicles, upon registering
a motor vehicle or issuing an operator's or chauffeur's
license, shall issue to the owner or licensee, as the case
may be, a copy of this section.

The commissioner of highways shall cause appropriate
signs to be placed at the state boundary on each primary
and secondary road, informing those entering the state
of the maximum penalty herein provided for disposing
of litter in, upon and near highways and roads in violation
of this section.

No portion of this section shall be construed to restrict a
private owner in the use of his own private property
or to prohibit the disposal of materials designated in this
section in any manner authorized by law.

Any person violating any provision of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred nor
more than five hundred dollars or imprisoned in the
county jail not more than thirty days, or both fined and
imprisoned: Provided, That at the election of the person
charged with violating any provision of this section,
execution of any such sentence shall be suspended upon
the condition that such person for a total of sixteen hours
pick up and remove from any area of any public highway,
road, street or alley, land or property, or public park
or other public property, the area to be specified by the
court, any and all litter, garbage, refuse, trash, cans, bot-
tles, papers, ashes, cigarette or cigar butts, carcass of
any dead animal or any part thereof, offal or any other
offensive or unsightly matter placed, deposited, dumped
or thrown thereon, contrary to the provisions of this sec-
tion, by anyone prior to the date of such conviction. If
execution of any such sentence is so suspended and the
person convicted satisfies the conditions upon which
execution was suspended, he shall be discharged with
like effect as if the fine had been fully paid and the
sentence had been fully executed, and if he does not
satisfy such condition, then such sentence shall be executed.

Any law-enforcement officer who shall observe a person violating the provisions of this section shall have a mandatory duty to make an arrest or otherwise prosecute 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 reenacted, all to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.
§20-5A-1. Declaration of policy.
§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-17. Civil penalties and injunctive relief.

§20-5A-1. Declaration of policy.

1 It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities and the provision of a permanent foundation for healthy industrial development.


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

3 (a) “Director” shall mean the director of the department of natural resources;

5 (b) “Board” shall mean the state water resources board;
(c) "Chief" shall mean the chief of the division of water resources of the department of natural resources;

(d) "Person," "persons" or "applicant" shall mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever;

(e) "Water resources," "water" or "waters" shall mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands;

(f) "Pollution" shall mean the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the waters of the state;

(g) "Sewage" shall mean water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present;

(h) "Industrial wastes" shall mean any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as hereinafter defined, shall
also be considered “industrial wastes” within the meaning of this article;

(i) “Industrial user” shall mean those industries identified in the standard industrial classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category “division d—manufacturing” and other classes of significant waste producers identified under regulations issued by the board or the administrator of the United States environmental protection agency;

(j) “Other wastes” shall mean garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, heat, or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;

(k) “Establishment” shall mean an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well, and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;

(l) “Sewer system” shall mean pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

(m) “Treatment works” shall mean any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the
purpose of regulating or controlling the quality and rate
of flow thereof;

(n) "Publicly owned treatment works" shall mean any
treatment works owned by the state or any political
subdivision thereof, any municipality or any other public
entity, for the treatment of pollutants;

(o) "Disposal system" shall mean a system for treat-
ing or disposing of sewage, industrial wastes, or other
wastes, or the effluent therefrom, either by surface or
underground methods, and shall be construed to include
sewer systems, the use of subterranean spaces, treatment
works, disposal wells and other systems;

(p) "Outlet" shall mean the terminus of a sewer
system or the point of emergence of any water-carried
sewage, industrial wastes, or other wastes, or the effluent
therefrom, into any of the waters of this state, and shall
include a point source;

(q) "Point source" shall mean any discernible, con-
fined and discrete conveyance, including, but not limited
to, any pipe, ditch, channel, tunnel, conduit, well, dis-
crete fissure, container, rolling stock, or vessel or other
floating craft, from which pollutants are or may be dis-
charged;

(r) "Activity" or "activities" shall mean any activity
or activities for which a permit is required by the pro-
visions of section five of this article;

(s) "Disposal well" shall mean any well drilled or
used for the injection or disposal of treated or untreated
sewage, industrial wastes or other wastes into under-
ground strata;

(t) "Effluent limitation" shall mean any restriction
established on quantities, rates and concentrations of
chemical, physical, biological and other constituents which
are discharged into the waters of this state;

(u) "Code" shall mean the code of West Virginia, one
thousand nine hundred thirty-one, as amended;
(v) "Department" shall mean the department of natural resources;

(w) "Well" shall mean any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" shall not have included within its meaning any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(x) "Pollutant" shall mean industrial wastes, sewage or other wastes as defined in this section.

§20-5A-3. General powers and duties of chief and board with respect to pollution.

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;

(2) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may re-
receive moneys from such agencies, officers and persons on behalf of the state. The department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made;

(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to water pollution, and the causes, control and reduction thereof, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for pollution control and abatement;

(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction of the pollution of the waters of the state;

(10) To exercise general supervision over the administration and enforcement of the provisions of this ar-
ticle, and all rules, regulations, permits and orders is­sued pursuant to the provisions of this article;

(11) In cooperation with the college of engineering at West Virginia University and the schools and depart­ments of engineering at other institutions of higher edu­cation operated by this state, to conduct studies, sci­entific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution, and to this end, the chief may cooperate with any public or private agency and receive therefrom, on behalf of the state, and for deposit in the state treasury, any moneys which such agency may contribute as its part of the expenses thereof, and all gifts, donations or con­tributions received as aforesaid shall be expended by the chief according to the requirements or directions of the donor or contributor without the necessity of an appropriation therefor, except that an accounting thereof shall be made in the fiscal reports of the depart­ment;

(12) To require the prior submission of plans, speci­fications, and other data relative to, and to inspect the construction and operation of, any activity or activities in connection with the issuance and revocation of such permits as are required by this article or the rules and regulations promulgated hereunder; and

(13) To require any and all persons directly or in­directly discharging, depositing or disposing of treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state or into any underground strata, and any and all persons operating an establishment which produces or which may produce or from which escapes, releases or emanates or may escape, release or emanate treated or untreated sewage, industrial wastes or other wastes or the effluent therefrom, into or near any waters of the state or into any underground strata, to file with
the division of water resources such information as
the chief may require in a form or manner prescribed
by him for such purpose, including, but not limited to,
data as to the kind, characteristics, amount and rate of
flow of any such discharge, deposit, escape, release or
disposition.

(b) In addition to all other powers and duties of the
water resources board, as prescribed in this article or
elsewhere by law, the board shall have and may exercise
the following powers and authority and shall per-
form the following duties:

(1) To cooperate with any interstate agencies for
the purpose of formulating, for submission to the
Legislature, interstate compacts and agreements relating
to the control and reduction of water pollution;

(2) To adopt, modify, repeal and enforce rules and
regulations, in accordance with the provisions of chapter
twenty-nine-a of this code, (A) implementing and making
effective the declaration of policy contained in section
one of this article and the powers, duties and respon-
sibilities vested in the board and the chief by the pro-
visions of this article and otherwise by law; (B) pre-
venting, controlling and abating pollution; (C) estab-
lishing standards of quality for the waters of the state
under such conditions as the board may prescribe for
the prevention, control and abatement of pollution;
and (D) to facilitate the state's participation in the
"National Pollutant Discharge Elimination System"
pursuant to the "Federal Water Pollution Control Act,"
as amended: Provided, That no such rule and regulation
adopted by the board shall specify the design of equip-
ment, type of construction or particular method which a
person shall use to reduce the discharge of a pollutant; and

(3) To make and enter a consent order which shall
have the same effect as an order entered after a hearing
as provided in section fifteen of this article.

(c) The board is hereby authorized to hire one or
more individuals to serve as hearing examiners on a full
or part-time basis. Such individuals may be attorneys-
at-law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

(d) Whenever required to carry out the objectives of this article: (A) The chief shall require the owner or operator of any point source or establishment to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods, (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the chief shall prescribe, and (v) provide such other information as he may reasonably require; and (B) the chief or his authorized representative upon presentation of credentials (i) shall have a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained under (A) of this subsection are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under (A) of this subsection and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under (A) of this subsection.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code. In the event a county com-
mission shall fail to act to establish a county-wide public
service district or districts, the board shall act jointly
with the state director of health, the director of the
department of natural resources and the chief of the
division of water resources to further investigate and
ascertain the financial feasibility and projected financial
capability and, subject to the approval of the public ser-
vice commission, order the county commission to take
action to establish such public service district or districts
as may be necessary to control, reduce or abate the pollu-
tion, and when so ordered the county commission mem-
bers must act to establish such a county-wide public
service district or districts.

§20-5A-3a. Standards of water quality and effluent limitations.

(a) In order to carry out the purposes of this article,
the board shall promulgate rules and regulations setting
standards of water quality and effluent limitations to
be applicable to the waters of this state, which standards
of quality and effluent limitations shall be such as to
protect the public health and welfare, wildlife, fish and
aquatic life, and the present and prospective future
uses of such waters for domestic, agricultural, industrial,
recreational, scenic and other legitimate beneficial uses
thereof.

(b) In establishing, amending, revising or repealing
rules and regulations relating to the water quality stan-
dards and effluent limitations, the board shall follow all
procedures provided by article three, chapter twenty-
ine-a of the code.

(c) All persons affected by rules and regulations es-
tablishing water quality standards and effluent limitations
shall promptly comply therewith: Provided, That where
necessary and proper, the chief may specify a reasonable
time for persons not complying with such standards and
limitations to comply therewith, and upon the expiration
of any such period of time, the chief shall revoke or
modify any permit previously issued which authorized
the discharge of treated or untreated sewage, industrial
wastes or other wastes into the waters of this state which
result in reduction of the quality of such waters below
the standards and limitations established therefor by
rules and regulations of the board.

§20-5A-5. Prohibitions; permits required.

1 (a) The chief may, after public notice and opportunity
for public hearing, issue a permit for the discharge or
disposition of any pollutant or combination of pollutants
into waters of this state upon condition that such dis-
charge or disposition meets or will meet all applicable
state and federal water quality standards and effluent
limitations and all other requirements of this article.

8 (b) It shall be unlawful for any person, unless he
holds a permit therefor from the department, which is
in full force and effect, to:

11 (1) Allow sewage, industrial wastes or other wastes, or
the effluent therefrom, produced by or emanating from
any point source, to flow into the waters of this state;

14 (2) Make, cause or permit to be made any outlet.
or substantially enlarge or add to the load of any exist-
ing outlet, for the discharge of sewage, industrial wastes
or other wastes, or the effluent therefrom, into the waters
of this state;

19 (3) Acquire, construct, install, modify or operate a
disposal system or part thereof for the direct or in-
direct discharge or deposit of treated or untreated sewage,
industrial wastes or other wastes, or the effluent there-
from, into the waters of this state, or any extension to
or addition to such disposal system;

25 (4) Increase in volume or concentration any sewage,
industrial wastes or other wastes in excess of the dis-
charges or disposition specified or permitted under any
existing permit;

29 (5) Extend, modify or add to any point source, the
operation of which would cause an increase in the volume
or concentration of any sewage, industrial wastes or
other wastes discharging or flowing into the waters of
the state;
(6) Construct, install, modify, open, reopen, operate
or abandon any mine, quarry or preparation plant, or
dispose of any refuse or industrial wastes or other wastes
from any such mine or quarry or preparation plant:
Provided, That the department's permit shall only be
required wherever the aforementioned activities cause,
may cause or might reasonably be expected to cause a
discharge into or pollution of waters of the state, except
that a permit shall be required for any preparation plant:
Provided, however, That unless waived in writing by
the chief, every application for a permit to open, reopen
or operate any mine, quarry or preparation plant or to
dispose of any refuse or industrial wastes or other wastes
from any such mine or quarry or preparation plant shall
contain a plan for abandonment of such facility or opera-
tion, which plan shall comply in all respects to the re-
quirements of this article. Such plan of abandonment
shall be subject to modification or amendment upon ap-
plication by the permit holder to the chief and approval
of such modification or amendment by the chief;

(7) Operate any disposal well for the injection or re-
injection underground of any industrial wastes, in-
cluding, but not limited to, liquids or gases, or convert
any well into such a disposal well or plug or abandon
any such disposal well.

(c) Where a person has a number of outlets emerging
into the waters of this state in close proximity to one
another, such outlets may be treated as a unit for the
purposes of this section, and only one permit issued for
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
permits for any activity specified in section five of this
article and, notwithstanding any other provision of law
to the contrary, no other discharge permit or discharge
authorization from any other state department, agency,
commission, board or officer shall be required for such
activity except that which is required from the depart-
ment of mines by the provisions of chapter twenty-two of this code. All applications must be submitted on a form as prescribed above. An applicant shall furnish all information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Until all such required information is furnished, an application shall not be considered a complete application. The chief and board shall protect any information (other than effluent data) contained in such permit application form, or other records, reports or plans as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a national pollutant discharge elimination form, the chief or board shall forward such information to the regional administrator of the United States environmental protection agency for his concurrence in any determination of confidentiality. A reasonable filing fee, as determined by rules and regulations of the board, shall accompany the application when filed with the division of water resources. The filing fee shall be deposited in the state treasury to the credit of the state general fund. The filing fee shall not be returned to the applicant.

§20-5A-7. Procedure concerning permits required under article; transfer of permits; prior permits.

(a) The chief or his duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the division of sanitary engineering of the state department of health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section five of this article, the chief shall consult with the director of the state geological and economic survey and the
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.

(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.

(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.
(d) An application for a permit incident to remedial action in accordance with the provisions of section eleven of this article shall be processed and decided as any other application for a permit required under the provisions of section five of this article.

(e) A complete application for any permit shall be acted upon by the chief, and the department’s permit delivered or mailed, or a copy of any order of the chief denying any such application delivered or mailed to the applicant by the chief, within a reasonable time period as prescribed by rules and regulations of the board.

(f) When it is established that an application for a permit should be denied, the chief shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The chief shall also cause a notice to be served with a copy of such order, which notice shall advise the applicant of his right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of section fifteen of this article, within thirty days after the date upon which the applicant received the copy of such order. However, an applicant may alter the plans and specifications for the proposed activity and submit a new application for any such permit, in which event the procedure hereinbefore outlined with respect to an original application shall apply.

(g) Upon the sale of property which includes an activity for which the department’s permit was granted, the permit shall be transferable to the new owner, but the transfer shall not become effective until the provisions of section eight-b of this article are fully complied with, and until such transfer is made in the records of the division of water resources.

(h) All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the state issued by the water resources board prior to July one, one thousand nine hundred sixty-four, and all permits heretofore
issued under the provisions of this article, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules and regulations promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days’ notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided for in section eight of this article, to be served upon the permit holder as specified in said section eight.

§20-5A-8. Inspections; orders to compel compliance with permits; service of orders.

After issuance of the department’s permit for any activity the chief or his duly authorized representatives may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the department’s permit for any activity, the chief is hereby authorized, after at least twenty days’ notice, to make and enter an order revoking, suspending or modifying in whole or in part such permit for cause including, but not limited to, the following:

(1) Violation of any term or condition of the permit;
(2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, release, escape, deposit or disposition.

The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon the person
§20-SA-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 and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the state, or does on occasions cause pollution or is violating any rule or regulation or effluent limitation of the board, he shall, with the consent of the director, either make and enter an order directing such person to stop such pollution or the violation of the rule or regulation or effluent limitation of the board, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the chief based his determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accordance with the provisions of sections five, six and seven of this article. The chief shall fix a time limit for the completion of such action. Whether the chief shall make and enter an order to stop such pollution or shall make and enter an order to take remedial action, in either case the person so ordered may elect to cease operations of the establishment deemed to be the source of such discharge or deposits causing pollution, if the pollution referred to in the chief's order shall be stopped thereby.

2 The chief shall cause a copy of any such order to be served by registered or certified mail or by a conservation officer or other law-enforcement officer upon such 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
otherwise appropriated, and if there be not sufficient 

funds on hand or unappropriated, then the necessary 

funds shall be raised by the issuance of bonds, any direct 

general obligation bond issue to be subject to the ap- 

proval of the state sinking fund commission and the at- 

torney general of the state of West Virginia. 

If the estimated cost of the remedial action to be taken 

by a municipal corporation to comply with such order 
is such that any bond issue necessary to finance such 

action would not raise the total outstanding bonded 

indebtedness of such municipal corporation in excess of 

the constitutional limit imposed upon such indebted- 

ness by the constitution of this state, then and in that 

event the necessary bonds may be issued as a direct 

obligation of such municipal corporation, and retired 

by a general tax levy to be levied against all property 

within the limit of such municipal corporation listed and 

assessed for taxation. If the amount of such bonds 
necessary to be issued would raise the total outstanding 

bonded indebtedness of such municipal corporation above 

said constitutional limitation on such indebtedness, or 

if such municipal corporation by its governing body shall 
declare against the issuance of direct obligation bonds, 

then such municipal corporation shall issue revenue 
bonds and provide for the retirement thereof in the 

same manner and subject to the same conditions as pro- 
vided for the issuance and retirement of bonds in chapter 
twenty-five, acts of the Legislature, first extraordinary 

session, one thousand nine hundred thirty-three, and any 

amendment thereof: Provided, That the provisions of 
section six of the above mentioned act, allowing ob- 

jections to be filed with the governing body, and provid- 
ing that a written protest of thirty percent or more of the 
owners of real estate shall require a four-fifths vote of 
the governing body for the issuance of said revenue 
bonds, shall not apply to bond issues proposed by any 
municipal corporation to comply with an order made 
and entered under the authority of this article, and such 
objections and submission of written protest shall not 
be authorized, nor shall the same, if made or had, operate 
to justify or excuse failure to comply with such order.
The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein provided, shall constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the chief. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same shall be financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of said chapter twenty-five, acts of the Legislature, first extraordinary session, one thousand nine hundred thirty-three, and any amendments thereof.

§20-5A-15. Appeal to water resources board.

(a) Any person adversely affected by an order made and entered by the chief in accordance with the provisions of this article, or aggrieved by failure or refusal of the chief to act within the specified time as provided in subsection (e) of section seven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the water resources board for an order vacating or modifying such order, or for such order, action or terms and conditions as the chief should have entered, taken or imposed. The person so appealing shall be known as the appellant and the chief shall be known as the appellee. If the chief denies a permit because of any disapproval of a permit application by one or more of the public officers required to review such applications under the provisions of subsection (a), section seven of this article, such public officers shall be joined as a coappellee or coappellees with the chief in such appeal.
(b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after date upon which the appellant received the copy of such order or received such permit, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the order appealed from. If it appears to the director or the board that an unjust hardship to the appellant will result from the execution of the chief's order pending determination of the appeal, the director or the board may grant a suspension of such order and fix its terms. The notice of appeal shall set forth the order or terms and conditions complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the chief within three days after the notice of appeal is filed with the board.

(c) Within seven days after receipt of his copy of the notice of appeal, the chief shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the chief's file relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any persons affected by any such activity or by such alleged pollution may by petition intervene as a party appellant or appellee. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee, and, with the consent of the board, by any intervenors.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal authorized by this section and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section, with the following modifications or exceptions:

(1) Unless the board directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County, West Virginia, and

(2) In accordance with the provisions of section one,
(e) Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner employed by the board. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistants, or the chief, with the written approval of the attorney general, may employ counsel to represent him. At any such hearing the appellant and any intervenor may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(g) After such hearing and consideration of all the testimony, evidence and record in the case, the board shall make and enter an order affirming, modifying or vacating the order of the chief, or shall make and enter
such order as the chief should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued. In determining its course of action, the board shall take into consideration not only the factors which the chief was authorized to consider in making his order and in fixing the terms and conditions of any permit, but also the economic feasibility of treating and/or controlling the sewage, industrial wastes or other wastes involved.

(h) Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(i) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of section sixteen of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.


(a) Any person or the chief adversely affected by an order made and entered by the board after such appeal hearing, held in accordance with the provisions of section fifteen of this article, is entitled to judicial review thereof. All of the provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extento in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms 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
any rule and regulation or who violates any standard
or order promulgated or made and entered under the
provisions of this article shall be subject to a civil penalty
not to exceed ten thousand dollars per day of such vio-
lation. Any such civil penalty may be imposed and col-
lected only by a civil action instituted by the chief in
the circuit court of the county in which the violation oc-
curred or is occurring or of the county in which the
waters thereof are polluted as the result of such violation.

Upon application by the chief, the circuit courts of this
state or the judges thereof in vacation may by injunc-
tion compel compliance with and enjoin violations of
the provisions of this article, the rules and regulations
of the board, effluent limitations, the terms and condi-
tions of any permit granted under the provisions of
this article, or any order of the chief or board, and the
venue of any such action shall be the county in which
the violation or noncompliance exists or is taking place
or in any county in which the waters thereof are polluted
as the result of such violation or noncompliance. The
court or the judge thereof in vacation may issue a
temporary or preliminary injunction in any case pend-
ing a decision on the merits of any injunctive applica-
tion filed. Any other section of this code to the contrary
notwithstanding, the state shall not be required to furnish
bond as a prerequisite to obtaining injunctive relief under
this article. An application for an injunction under
the provisions of this section may be filed and injunc-
tive relief granted notwithstanding that all of the ad-
ministrative remedies provided for in this article have
not been pursued or invoked against the person or
persons against whom such relief is sought and notwith-
standing that the person or persons against whom such
relief is sought have not been prosecuted or convicted
under the provisions of this article.

The judgment of the circuit court upon any applica-
tion filed or in any civil action instituted under the pro-
visions of this section shall be final unless reversed,
vacated or modified on appeal to the supreme court of
appeals. Any such appeal shall be sought in the manner
provided by law for appeals from circuit courts in other
civil cases, except that the petition seeking review in
any injunctive proceeding must be filed with said supreme
court of appeals within ninety days from the date of
entry of the judgment of the circuit court.

Legal counsel and services for the chief or the board
in all civil penalty and injunction proceedings in the
circuit court and in the supreme court of appeals of
this state shall be provided by the attorney general or
his assistants and by the prosecuting attorneys of the
several counties as well, all without additional compens-
ation, or the chief or the board, with the written ap-
proval of the attorney general, may employ counsel to
represent him or it in a particular proceeding.


Any person who causes pollution or who fails or re-
fuses to discharge any duty imposed upon him by this
article or by any rule or regulation of the board, promul-
gated pursuant to the provisions and intent of this article,
or by an order of the chief or board, or who fails or re-
fuses to apply for and obtain a permit as required by the
provisions of this article, or who fails or refuses to comply
with any term or condition of such permit, shall be guilty
of a misdemeanor, and, upon conviction thereof, shall
be punished by a fine of not less than one hundred
dollars nor more than one thousand dollars, or by im-
prisonment in the county jail for a period not exceeding
six months, or by both such fine and imprisonment.

Any person who shall intentionally misrepresent any
material fact in an application, record, report, plan or
other document filed or required to be maintained under
the provisions of this article or any rules and regulations
promulgated by the board thereunder shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be
punished by a fine of not less than one thousand dollars
nor more than ten thousand dollars or by imprisonment
in the county jail not exceeding six months or by both
such fine and imprisonment.
Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any provision of this article or any rule or regulation of the board or any effluent limitation or any order of the chief or board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.

Any such person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided for in this article have been pursued or invoked against said person and notwithstanding that a civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.

Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of such permit, he shall not be subject to criminal prosecution for pollution recognized and authorized by such permit.
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.

Commencing on the effective date of this section, and ending on the last day of December, one thousand nine hundred eighty, no new permits, including prospecting permits, shall be issued, or any existing permits renewed, under the provisions of article six of this chapter for the surface mining of coal or any other mineral or under the provisions of article two, chapter twenty-two of this code for the underground mining of coal within or underneath what is known as the Cranberry wilderness study area, located in Webster and Pocahontas Counties as the same is described in the Eastern Wilderness Act, Public Law No. 93-622, 42 U.S.C.A., section 1132, et seq.; and any such existing permits to surface or underground mine within or underneath such area shall immediately terminate and all land restoration and reclamation required pursuant thereto shall be completed prior to the first 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 court of appeals of West Virginia has held that conservation officers are covered by the provisions of the state wage and hour law, article five-c, chapter twenty-one of this code. The Legislature further finds and declares that because of the unique duties of conservation officers, it is not appropriate to apply said wage and hour provisions to them. Accordingly, conservation officers are hereby excluded from the provisions of said wage and hour law. In lieu of any overtime pay they might otherwise have received under the wage and hour law, eligible conservation officers shall receive in addition to their salaries a monthly supplemental payment not to exceed one hundred seventy-five dollars per month.

15 The director of the department of natural resources shall, within thirty days after the effective date hereof, promulgate a rule or regulation to establish the standard work week for conservation officers. Such rule or regulation shall establish, on a graduated hourly basis, the criteria for receipt of a portion or all of such supplemental payment for hours worked in excess of said standard work
Such rule or regulation shall be promulgated pursuant to the provisions of chapter twenty-nine-a of the code. The director shall certify or cause to be certified monthly the names of those conservation officers who have worked hours in excess of the standard work week 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 requirements, persons selected as conservation officers shall have reached their eighteenth birthday and shall not have reached their fortieth birthday at the time of appointment, be in good physical condition and of good moral character, temperate in habits and shall not have been convicted of a felony. Whenever possible and practicable, preference in selection of conservation officers shall be given honorably discharged United States military personnel. Each conservation officer, before entering upon the discharge of his duties, shall take and subscribe to the oath of office prescribed in article four, section
five of the constitution of West Virginia, which executed oath shall be filed with the director.

With the exception of the chief conservation officer, each full-time, salaried conservation officer appointed under the provisions of this chapter shall, upon attaining the age of sixty-five, be required to accept a mandatory retirement from the division of law enforcement. The director shall notify such officer in writing at least ninety days prior to his sixty-fifth birthday of the effective date of his retirement and all such benefits and privileges that such officer has accrued. The provisions of this section shall not be construed to mean that a conservation officer cannot accept at his own request an earlier retirement, or that he cannot continue to be employed by some other division or department of state government.

The director shall prescribe the kind, style and material of uniforms to be worn by conservation officers. Uniforms and other equipment furnished to the conservation officers shall be and remain the property of the state.

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 meaning, as used in this article:

2 (a) “Casing” means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

3 (b) “Cement” means hydraulic cement properly mixed with water;

4 (c) “Chairman” means the chairman of the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

5 (d) “Chief” means chief of the division of water resources of the department of natural resources;

6 (e) “Coal operator” means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

7 (f) “Coal seam” and “workable coal bed” are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

8 (g) “Deep well” means any well drilled and completed in a formation at or below the top of the uppermost member of the “Onondaga Group” or at a depth of or greater than six thousand feet, whichever is shallower;

9 (h) “Department” or “department of mines” means the
duly constituted authorities under the laws of this state having jurisdiction over coal mining operations;

(i) "Deputy director" means the deputy director for oil and gas of the department of mines;

(j) "Expanding cement" means any cement approved by the department which expands during the hardening process, including but not limited to regular oil field cements with the proper additives;

(k) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site;

(l) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (m) of this section;

(m) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs;

(n) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;

(o) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(p) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(q) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;
(r) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

(s) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(t) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(u) "Stimulate" means any action taken by well operator to increase the inherent productivity of an oil or gas well including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(v) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(w) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined.

§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

1 It shall be unlawful for any well to be drilled, redrilled, deepened, fractured, stimulated, plugged, pressured, converted, combined or physically changed to allow the migration of fluid from one formation to another unless a permit therefor has
been issued by the department. An application for any such permit shall be filed with the deputy director and shall contain the following:

(a) The name and address of the well operator;

(b) The name and address of the owner of the surface lands upon which the well is or may be located;

(c) The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by section two, if any, if said owner or lessee is not yet operating said coal seams;

(d) The name and address of the agent of the well operator, if any such agent is required to be designated under the provisions of this section;

(e) The approximate depth to which the well is to be drilled;

(f) The proposed casing program of such well including the sizes of all such casing, the depth to which all casing is to be run and the extent to which such casing is to be cemented;

(g) The proposed method of reclamation which shall comply with the requirements of section twelve-b of this article; and

(h) Any other information which the deputy director by rule or regulation may require.

If the well operator named in such application is a corporation, partnership or a nonresident of the state of West Virginia, then there shall be designated the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the state of West Virginia upon whom notices, orders or other communications issued pursuant to this article or article five-a, chapter twenty, may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.
The well owner or operator shall install the permit number as issued by the deputy director in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the administrative rules and regulations of the department.

For the purpose of ascertaining whether or not issuance of any permit to drill, redrill, deepen, case, fracture, stimulate, pressure, operate, plug, abandon, convert or combine any well, or physically change any well or allow the migration of fluid from one formation to another, will contribute to an existing pollution problem, the deputy director shall have the right and it shall be his duty to consult with the director of the department of natural resources. In the event the issuance of any such permit may reasonably be expected to contribute to any such existing pollution then the deputy director will not issue such permit.

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both such fine and imprisonment.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the depart-
ment of mines. In the event the tract of land on which the said
well proposed to be drilled or fractured is located is known to
be underlaid with one or more coal seams, copies of the plat
shall be forwarded by registered or certified mail to each and
every coal operator operating said coal seams beneath said
tract of land, who has mapped the same and filed his maps
with the department in accordance with article two of this
chapter, and the coal seam owner of record and lessee of
record, if any, if said owner or lessee has recorded the dec-
laration provided in section twenty of this article, and if said
owner or lessee is not yet operating said coal seams beneath
said tract of land. With each of such plats there shall be en-
closed a notice (form for which shall be furnished on re-
quest by the department of mines) addressed to the de-
partment of mines and to each such coal operator, owner and
lessee, if any, at their respective addresses, informing them
that such plat and notice are being mailed to them respec-
ively by registered or certified mail, pursuant to the require-
ments of this article. If no objections are made, or are
found by the department, to such proposed location or pro-
posed fracturing within fifteen days from receipt of such plat
and notice by the department of mines, the same shall be
filed and become a permanent record of such location or
fracturing subject to inspection at any time by any interested
person, and the department may forthwith issue to the well
operator a permit reciting the filing of such plat, that no
objections have been made by the coal operators, owners
and lessees, if any, or found thereto by the department, and
authorizing the well operator to drill at such location, or to
fracture the well. Unless the department has objections to
such proposed location or proposed fracturing or stimulating,
such permit may be issued prior to the expiration of such
fifteen-day period upon the obtaining by the well operator
of the consent in writing of the coal operator or operators,
owners and lessees, if any, to whom copies of the plat and
notice shall have been mailed as herein required, and upon
presentation of such written consent to the department. The
notice above provided for may be given to the coal operator
by delivering or mailing it by registered or certified mail
as above to any agent or superintendent in actual charge of
mines.
A permit to drill, or to fracture or stimulate an oil or gas well, shall not be issued unless the application therefor is accompanied by a bond of the operator in the sum of two thousand five hundred dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department: Provided, That when such operator makes or has made application for permits to drill a number of wells or fracture or stimulate a well or wells the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifteen thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid: Provided, however, That in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory, or the District of Columbia is not in default in the payment of any part of its funded indebtedness; (3) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all the taxable property located herein, that the total
indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (4) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (5) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (6) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement or payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (7) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (8) bonds issued by a federal land bank or home owners' loan corporation. The cash deposit or market value, or both, of the collateral securities shall be equal to or greater than the penalty of the separate or blanket bond, as the case may be. Upon receipt of any such deposit or cash or
collateral securities, the deputy director for oil and gas shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the deputy director for oil and gas, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, in other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas, or both, its operator may deposit with the deputy director for oil and gas cash from the sale of the oil or gas, or both, until the total deposited is two thousand five hundred dollars. When the sum of the cash deposited is two thousand five hundred dollars, the separate bond for the well shall be released by the department. Upon receipt of such cash, the deputy director for oil and gas shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all
interest and income which may be earned on the cash de-
posed so long as the operator is in full compliance with all
laws, rules and regulations relating to the drilling, redrilling,
deepening, casing, plugging, abandonment and reclamation of
the well for which the cash was deposited and so long as he
has furnished all reports and information as may be required
by the department. If the cash realized from the sale of oil
or gas, or both, from the well is not sufficient for the operator
to deposit with the deputy director for oil and gas the sum
of two thousand five hundred dollars within one year of the
day the well started producing, the corporate or surety com-
pany which issued the bond on the well may notify the
operator and the department of its intent to terminate its
liability under its bond. The operator then shall have thirty
days to furnish a new bond from a corporate bonding or
surety company or collateral securities, as provided in the
next preceding paragraph of this section, with the department.
If a new bond or collateral securities are furnished by the
operator, the liability of the corporate bonding or surety
company under the original bond shall terminate as to any
acts and operations of the operator occurring after the effec-
tive date of the new bond or the date the collateral securities
are accepted by the treasurer of the state of West Virginia.
If the operator does not furnish a new bond or collateral
securities, as provided in the next preceding paragraph of
this section, with the department, he shall immediately plug,
fill and reclaim the well in accordance with all of the pro-
visions of law, rules and regulations applicable thereto. In
such case, the corporate or surety company which issued the
original bond shall be liable for any plugging, filling or
reclamation not performed in accordance with such laws,
rules and regulations.

Any such bond shall remain in force until released by the
department and the department shall release the same when
it is satisfied the conditions thereof have been fully performed.
Upon the release of any such bond, any cash or collateral
securities deposited shall be returned by the deputy director
for oil and gas to the operator who deposited same.

If any of the requirements of this article or rules and
regulations promulgated pursuant thereto or the orders of
the deputy director for oil and gas have not been complied
with within the time limit set by the violation notice as
defined in sections one-g, one-h and one-i, article four, chapter
twenty-two of this code the performance bond shall then
be forfeited.

When any bond is forfeited pursuant to the provisions of
this article or rules and regulations promulgated pursuant
to the deputy director shall give notice to the attorney
general who shall collect the forfeiture without delay.

All forfeitures shall be deposited in the treasury of the
state of West Virginia in the special reclamation fund as
defined in section twelve-a, article four, chapter twenty-two
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.

Before fracturing any well the well operator shall, by regis-
tered or certified mail, forward a notice of intention to frac-
ture such well to the department of mines and to each and
every coal operator operating coal seams beneath said tract
of land, who has mapped the same and filed his maps with the
department in accordance with article two of this chapter,
and the coal seam owner and lessee, if any, if said owner of
record or lessee of record has recorded the declaration pro-
vided in section twenty of this article, and if said owner or
lessee is not yet operating said coal seams beneath said tract
of land.

The notice shall be addressed to the department of mines
and to each such coal operator at their respective addresses,
shall contain the number of the drilling permit for such
well and such other information as may be required by the
department to enable the department and the coal operators
to locate and identify such well and shall inform them that
such notice is being mailed to them, respectively, by registered
or certified mail, pursuant to the requirements of this article.
(The form for such notice of intention shall be furnished on re-
quest by the department of mines.) If no objections are made,
or are found by the department, to such proposed fracturing
within fifteen days from receipt of such notice by the depart-
ment of mines, the same shall be filed and become a permanent
record of such fracturing, subject to inspection at any time
by any interested person, and the department shall forthwith
issue to the well operator a permit reciting the filing of such
notice, that no objections have been made by the coal opera-
tors, or found thereto by the department, and authorizing
the well operator to fracture such well. Unless the depart-
ment has objections to such proposed fracturing, such permit
shall be issued prior to the expiration of such fifteen-day period
upon the obtaining by the well operator of the consent in
writing of the coal operator or operators, owners or lessees,
if any, to whom notice of intention to fracture shall have been
mailed as herein required, and upon presentation of such
written consent to the department. The notice above provided
for may be given to the coal operator by delivering or mailing
it by registered or certified mail as above to any agent or
superintendent in actual charge of mines.

§22-4-2b. Plats prerequisite to introducing liquids or waste into
wells; preparation and contents; notice and informa-
tion furnished to coal operators, owners or lessees and
chief of water resources; issuance of permits; perfor-
mance bonds or security in lieu thereof.

Before drilling a well for the introduction of liquids for the
purposes provided for in section ten-a of this article or for the
introduction of liquids for the disposal of sewage, industrial
waste or other waste or the effluent therefrom on any tract
of land, or before converting an existing well for such purposes,
the well operator shall have a plat prepared by a registered
engineer or licensed land surveyor showing the district and
county in which the tract of land is located, the name and
acreage of the same, the names of the owners of all adjacent
tracts, the proposed or actual location of the well or wells
determined by a survey, the courses and distances of such
location from two permanent points of land marked on said
tract and the number to be given to the well, and shall for-
ward by registered or certified mail the original and one copy
of the plat to the department of mines. In addition, the well
operator shall provide the following information on the plat or
by way of attachment thereto to the department in the manner
and form prescribed by the department's rules and regulations:
(a) The location of all wells, abandoned or otherwise located
within the area to be affected; (b) where available, the casing
records of all such wells; (c) where available, the drilling log
of all such wells; (d) the maximum pressure to be introduced;
(e) the geological formation into which such liquid or pressure
is to be introduced; (f) a general description of the liquids to
be introduced; (g) the location of all water-bearing horizons
above and below the geological formation into which such
pressure, liquid or waste is to be introduced; and (h) such
other information as the deputy director by rule and regula-
tion may require.

In the event the tract of land on which said well proposed
to be drilled or converted for the purposes provided for in this
section is located is known to be underlaid with coal seams,
copies of the plat and all information required by this section
shall be forwarded by the operator by registered or certified
mail to each and every coal operator operating coal seams be-
neath said tract of land, who has mapped the same and filed
his maps with the department in accordance with article two
of this chapter, and the coal seam owner of record and lessee
of record, if any, if said owner or lessee has recorded the decla-
ration provided in section twenty of this article, and if said
owner or lessee is not yet operating said seams beneath said
tract of land. With each of such plats, there shall be enclosed a
notice (form for which shall be furnished on request by the
department of mines) addressed to the department of mines
and to each such coal operator, owner or lessee, if any, at
their respective addresses, informing them that such plat and
notice are being mailed to them, respectively, by registered or
certified mail, pursuant to the requirements of this section. The
deputy director shall forward a copy of the plat, notice and all
other information required by this section to the chief of the
division of water resources of the department of natural re-

If no objections are made by any such coal operator, owner,
lessee or such chief, or are found by the department to such
proposed drilling or converting of the well or wells for the
purposes provided for in this section within thirty days from
the receipt of such plat and notice by the department of mines,
the same shall be filed and become a permanent record of such
location or well, subject to inspection at any time by any
interested person, and the department shall forthwith issue to
the well operator a permit reciting the filing of such plat and
notice, that no objections have been made by the coal oper-
tors, owners and lessees, if any, or found thereto by the de-
partment of mines or by the chief, and authorizing the well
operator to drill at such location or convert such existing well
or wells for the purposes provided for in this section. Such
permit shall be issued prior to the expiration of such thirty-
day period upon the obtaining by the well operator, of the
consent in writing of the coal operator, owners and lessees,
if any, to whom copies of the plat and notice must have been
mailed as herein required and upon obtaining the consent in
writing of the chief, and upon presentation of such written
consent in writing of the chief, and upon presentation of such
written consent to the department. The notice above provided
for may be given to the coal operator by delivering or mailing
it by registered or certified mail as above to any agent or su-
perintendent in actual charge of the mines.

A permit to drill a well or wells or convert an existing well or
wells for the purposes provided for in this section shall not be
issued until all of the bonding provisions required by the pro-
visions of section two of this article have been fully complied
with and all such bonding provisions shall apply to all wells
drilled or converted for the purposes provided for in this section
as if such wells had been drilled for the purposes provided for
in section two of this article, except that such bonds shall be
conditioned upon full compliance with all laws, rules and
regulations relating to the drilling of a well or the converting
of an existing well for the purposes provided for in said section
ten-a, or introducing of liquids for the disposal of sewage, in-
dustrial waste or other waste or the effluent therefrom includ-
ing the redrilling, deepening, casing, plugging or abandonment
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 site or any fracturing site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the department of the plat and notice required by section two of this article, or within fifteen days from the receipt by the department of notice required by section two-a of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or fracturing with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such par-
ties present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the department, at which time the plat and notice required by section two or the notice required by section two-a as the case may be, shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section two, or the notice required by said section two-a, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section two-a, as the case may be.

(a) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The department shall take into consideration in arriving at its decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mines already surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into consid-
operation the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the department shall issue an order stating:

(1) That it refuses to issue a permit;

(2) That it will issue a permit for the proposed drilling location;

(3) That it will issue a permit for a drilling location different from that requested by the well operator.

The order shall state with particularity the reasons for the department's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public.

(b) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or
represented at such hearing, are unable to agree upon the
conditions under which the well is to be fractured as to protect
life and property, or upon conditions of fracturing that meet
with the approval of the department, then the department shall
proceed to hear the evidence and testimony in accordance with
sections one and two, article five, chapter twenty-nine-a of this
code, except where such provisions are inconsistent with this
article.

The department shall take into consideration upon its de-
cision whether the well can be fractured safely, taking into
consideration the dangers from creeps, squeezes or other
disturbances.

At the close of the hearing, or within ten days thereafter, the
department shall issue an order stating the conditions under
which the well is to be fractured, provided the well can be
fractured safely, taking into consideration the dangers from
creeps, squeezes or other disturbances. If such fracturing can-
not be done safely, the department shall issue an order stating
with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the
department’s order and shall be mailed by registered or certi-
fied mail to the parties present or represented at such hearing.
If the department has ruled that it will issue a permit, it shall
issue a permit effective ten days after it has mailed such
order, except that for good cause shown, the department may
stay the issuance of a permit for a period not to exceed thirty
days.

If a permit is issued, the department shall indicate the well
to be fractured on the plat on file and shall number and keep
an index of and docket each plat and notice mailed to it as
provided in section two of this article, and each notice mailed
to it as provided in section two-a of this article, entering in
such docket the name of the well operator, the names and
addresses of all persons notified, the dates of hearings and all
actions taken by the department. The department shall also
prepare a record of the proceedings, which record shall in-
clude all applications, plats and other documents filed with
the department, all notices given and proof of service thereof,
all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open 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.

When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the department of the plat and notice required by section two of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any such objection is filed, or if any objection is made by the department, the deputy director shall forthwith mail, by registered or certified mail, to the chairman of the review board, a notice that an objection to the proposed drilling or deepening of a shallow well has been filed with the department, and shall enclose in such notice a copy of all objections filed with or made by the department and a copy of the application and plat filed with the department in accordance with the provisions of section two of this article.

Thereafter, no further action shall be taken on such application by the department until the department receives an order from the review board directing the department to:

(1) Refuse a drilling permit; or

(2) Issue a drilling permit for the proposed drilling location; or

(3) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling
of the well for a period of not more than one year from the
date of issuance of such permit.

Upon receipt of such order, the department shall promptly
undertake the action directed by the review board, except that
the department shall not issue a drilling permit unless all
other provisions of this article (except section three) pertaining
to the application for and approval of a drilling permit have
been complied with. All permits issued by the department
pursuant to this section shall be effective ten days after
issuance unless the review board orders the department to
stay the effectiveness of a permit for a period not to exceed
thirty days from the date of issuance.

If a permit is issued, the department shall indicate the
approved drilling location on the plat filed with the department
in accordance with the provisions of section two of this article
and shall number and keep an index of and docket each
plat and notice mailed to it as provided in section two of
this article, and each notice mailed to it as provided in
section two-a of this article, entering in such docket the
name of the well operator, and the names and addresses of all
persons notified, the dates of conferences, hearings and all
other actions taken by the department and the review board.
The department shall also prepare a record of the proceed-
ings, which record shall include all applications, plats and
other documents filed with the department, all notices given
and proof of service thereof, all orders issued, all permits
issued and a transcript of the hearing. The record prepared
by the department shall be open to inspection by the public.

§22-4-3c. Applicability.

The provisions of this act affecting applications for per-
mits to drill shallow gas wells shall only apply to such applica-
tions filed after 12:01 a.m., August first, one thousand nine
hundred seventy-eight, and the provisions of this article
affecting such applications which were in effect immediately
prior to the effective date of this act shall apply to all such
applications filed prior to 12:01 a.m., August first, one
thousand nine hundred seventy-eight, with like effect as if
this act had not been enacted.
§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to proceedings under section three or section three-b of this article or section seven, article four-b of this chapter, adversely affected by the issuance of a drilling permit, or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing permit, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§22-4-5. Protective devices; when well penetrates workable coal bed.

When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or beds in such a manner as will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point at least thirty feet below the lowest workable coal bed which the well penetrates and shall be circulated and cemented from such point to the surface in such a manner as provided for in reasonable rules and regulations promulgated by the director of the department in accordance with the provisions of chapter twenty-nine-a. After any such string of casing has been so run and cemented to the surface, 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.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven of this article
shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the deputy director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the department of mines and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section two of this article, and the coal operators to whom notices are required to be given by section two-a of this article, of its intention to plug and abandon any such well (using such form of notice as the department may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the department of mines, in order that a representative or representatives of the department and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well:

Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the department of mines and such coal operator, owner or lessee, if any, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the department, first obtain the verbal permission of the deputy director for oil and gas or his designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plugging operations, give the written notices required by subdivision (a) above.

No well shall be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the department is furnished a bond of the operator in the sum of two thousand five hundred dollars, payable to the state of West Virginia, with a corporate bonding or
surety company authorized to do business in this state as
surety thereon, conditioned on full compliance with all laws,
rules and regulations relating to the casing, plugging, abandon-
ment and reclamation of wells and for furnishing such reports
and information as may be required by the department. When
a number of wells are involved, the operator may in lieu of
furnishing a separate bond furnish a blanket bond in the
sum of fifteen thousand dollars, payable to the state of
West Virginia, with a corporate bonding or surety company
authorized to do business in this state as surety thereon, and
conditioned as aforesaid. In lieu of corporate surety on a
separate or blanket bond, as the case may be, the operator
may elect to deposit with the deputy director for oil and
gas cash or collateral securities as specified in section two
of this article. All of the provisions of section two dealing
with cash or collateral securities in lieu of corporate surety
shall be fully applicable hereto except for the condition of
the bond with respect to which the operator must be in full
compliance in order to be entitled to the interest and income
earned on such securities. The operator shall be entitled to
such interest and income under this section so long as the
operator is in full compliance with all laws, rules and regula-
tions relating to the casing, plugging, abandonment and
reclamation of wells and for furnishing such reports and
information as may be required by the department. Any
such bond shall remain in force until released by the depart-
ment and the department shall release the same when it is
satisfied the conditions thereof have been fully performed.
Notwithstanding the foregoing provisions, any operator who,
in accordance with section two of this article, has furnished
a separate bond, which has not been released by the de-
partment, for the drilling, converting or drilling for the
introduction of liquids, for the disposal of sewage, industrial
waste or other waste or the effluent therefrom, or introducing
pressure, whether liquid or gas, or introducing liquid for the
purposes provided for in section ten-a of this article or
fracturing of the well it is now proposed be plugged and
abandoned, or who, in accordance with the provisions of said
section two of this article, has furnished a blanket bond which
has not been released by the department shall not be required
by this section to furnish any other bond. When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, the deputy director for oil and gas or his designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

§22-4-10. Methods of plugging well.

Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section ten-a of this article or for the disposal of sewage, industrial waste or other waste or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or
petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as afore-
said, a final cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material;

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used in-
stead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. A one hundred foot plug of expanding cement
shall then be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the department shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the department shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the department.

(c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than forty feet below the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point twenty feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.
(d) (1) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, a coal operator or coal seam owner may request that the well be plugged in the manner provided in subdivision (3) of this subsection rather than by the method provided in subsection (c) of this section. Such request (forms for which shall be provided by the department) must be filed in writing with the department prior to the scheduled plugging of the well, and must include the number of the well to be plugged and the name and address of the well operator. At the time such request is filed with the department, a copy of such request must also be mailed by registered or certified mail to the well operator named in the request.

(2) Upon receipt of such request, the department shall issue an order staying the plugging of the well and shall promptly determine the cost of plugging the well in the manner provided in subdivision (3) of this subsection and the cost of plugging the well in the manner provided in subsection (c) of this section. In making such determination, the department shall take into consideration any agreement previously made between the well operator and the coal operator or coal seam owner making the request. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall grant the request of the coal operator or owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section is less than the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall request payment into escrow of the difference between the determined costs by the coal operator or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the well operator has waived such payment, the department shall grant the request of the coal operator or coal seam owner and shall issue an order requiring the well operator to plug the
well in the manner provided in subdivision (3) of this sub-
section. If satisfactory notice of payment into escrow, or
notice that the well operator has waived such payment, is not
received by the department within fifteen days after the re-
quest for payment into escrow, the department shall issue an
order permitting the plugging of the well in the manner pro-
vided in subsection (c) of this section. Copies of all orders
issued by the department shall be sent by registered or certi-
fied mail to the coal operator or coal seam owner making the
request and to the well operator. When the escrow agent has
received certification from the department of the satisfactory
completion of the plugging work and the reimbursable extra
cost thereof (that is, the difference between the department's
determination of plugging cost in the manner provided in sub-
section (c) of this section and the well operator's actual
plugging cost in the manner provided in subdivision (3) of this
subsection), he shall pay the reimbursable sum to the well
operator or his nominee from the payment into escrow to the
extent available. The amount by which the payment into
escrow exceeds the reimbursable sum plus the escrow agent's
fee, if any, shall be repaid to the coal owner. If the amount
paid to the well operator or his nominee is less than the actual
reimbursable sum, the escrow agent shall inform the coal
owner, who shall pay the deficiency to the well operator or
his nominee within thirty days. If the coal operator breaches
this duty to pay the deficiency, the well operator shall have a
right of action and be entitled to recover damages as if for
wrongful conversion of personality, and his reasonable attor-
ney fees.

(3) Where a request of a coal operator or coal seam owner
filed pursuant to subdivision (1) of this subsection has been
granted by the department, the well shall be plugged in the
manner provided in subsection (a) of this section, except that
expanding cement shall be used instead of regular hydraulic
cement, to a point approximately two hundred feet below the
lowest workable coal bed. A one hundred foot plug of ex-
paniding cement shall then be placed in the well beginning at
the point approximately two hundred feet below the lowest
workable coal bed and extending to a point approximately
one hundred feet below the lowest workable coal bed. A string
of casing with an outside diameter no less than four and one
half inches shall then be run into the well to a point approxi-
mately one hundred feet below the lowest workable coal bed
and such string of casing shall be circulated and cemented in
to the surface. The casing shall then be emptied of liquid from
a point approximately one hundred feet below the lowest work-
able coal bed to the surface, and a vent or other device ap-
proved by the department shall be installed on the top of the
string of casing in such a manner that it will prevent liquids and
solids from entering the well but will permit ready access to
the full internal diameter of the coal protection string of cas-
ing when required. The string of casing and the vent or other
device approved by the department shall extend, when finally
in place, a distance of no less than thirty inches above ground
level and shall be permanently marked with the well number
assigned by the department. Notwithstanding the foregoing
provisions of this subdivision, if under particular circum-
stances a different method of plugging is required to obtain the
approval of another governmental agency for the safe mining
through of said well, the department may approve such dif-
ferent method of plugging if it finds the same to be as safe
for mining through and otherwise adequate to prevent gas or
other fluid migration from the oil and gas reservoirs as the
method above specified.

(e) Any person may apply to the department for an order to
clean out and replug a previously plugged well in a manner
which will permit the safe mining through of such well. Such
application shall be filed with the department and shall con-
tain the well number, a general description of the well loca-
tion, the name and address of the owner of the surface land
upon which the well is located, a copy of or record reference
to a deed, lease or other document which entitles the applicant
to enter upon the surface land, a description of the method by
which the well was previously plugged, and a description of
the method by which such applicant proposes to clean out
and replug the well. At the time an application is filed with
the department, a copy shall be mailed by registered or certi-
fied mail to the owner or owners of the land, and the oil and
gas lessee of record, if any, of the site land upon which the
well is located. If no objection to the replugging of the well is
filed by any such landowner or oil and gas lessee within thirty
days after the filing of the application, and if the department
determines that the method proposed for replugging the well
will permit the safe mining through of such well, the depart­
ment shall grant the application by an order authorizing the
replugging of the well. Such order shall specify the method by
which the well shall be replugged, and copies thereof shall be
mailed by certified or registered mail to the applicant and to
the owner or owners of the land, and the oil and gas lessee, if
any, of the site upon which such well is located. If any such
landowner or oil and gas lessee objects to the replugging of
the well, the department shall notify the applicant of such
objection. Thereafter, the department shall schedule a hearing
to consider the objection, which hearing shall be held after
notice by registered or certified mail to the objectors and the
applicant. After consideration of the evidence presented at the
hearing, the department shall issue an order authorizing the
replugging of the well if it determines that replugging of the
well will permit the safe mining through of such well. Such
order shall specify the manner in which the well shall be re-
plugged and copies thereof shall be sent by registered or certi­
fied mail to the applicant and objectors. The department shall
issue an order rejecting the application if it determines that
the proposed method for replugging the well will not permit the
safe mining through of such well.

(f) All persons adversely affected by a determination or
order of the department issued pursuant to the provisions of
this section shall be entitled to judicial review thereof in ac­
cordance with the provisions of articles five and six, chapter
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.

Hereafter, before removing any coal or other material, or
driving any entry or passageway within less than five hundred
feet of any well, and also before extending the workings in
any coal mine beneath any tract of land on which wells are
already drilled, or within five hundred feet of any well, or under any tract of land in visible possession by a well operator for the purpose of drilling for oil or gas, the coal operator shall forward, by registered mail, to, or file a copy of the parts of its maps and plans which it is required by law to prepare and file and bring to date, from time to time, showing its mine workings and projected mine workings beneath such tract of land and within five hundred feet of the outer boundaries thereof, simultaneously, with the well operator and the department of mines, accompanying each of said copies with a notice (form of which shall be furnished on request by the department of mines), addressed to the well operator and to the department of mines at their respective addresses, informing them that such plans or maps and notice are being mailed by registered mail to them, or are being filed and served upon them, respectively, pursuant to the requirements of this section. Following the filing of such parts of said plans or maps as aforesaid, the coal operator may proceed with its mining operations in the manner and as projected on such plans or maps, but shall not remove any coal or other material or cut any passageway nearer than two hundred feet of any completed well, or well that is being drilled, or for the purpose of drilling which a derrick is being constructed, without the consent of the department of mines, and the coal operator shall, at least every six months, bring such plans or maps so filed with the department to date, or file new plans and maps complete to date.

Application may be made at any time to the department of mines by the coal operator for leave to mine or remove coal or conduct its mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and any other material facts, and what further mining operations within two hundred feet of the well or through such well are contemplated, and praying the approval of the same by the department, and naming the well operator as a respondent. The coal operator shall file such petition with, or mail the same by registered mail to, the department and shall at the same time serve upon or mail by registered mail a true copy to the well operator. The
department of mines shall, forthwith upon receipt of such
copy, notify the well operator that it may answer the petition
within five days, and that in default of an answer the depart-
ment may approve the proposed operations as requested,
if it be shown by the petitioner or otherwise to the satisfaction
of the department that such operations are in accordance
with law and with the provisions of this article. At the
expiration of such five-day period, the department, whether
an answer be filed or not filed, shall fix a time and place of
hearing within ten days, of which it shall give the coal oper-
ator and the well operator five days’ written notice by regis-
tered mail, and after a full hearing, at which the well operator
and coal operator, as well as the department of mines, shall
be permitted to offer any competent and relevant evidence,
the department shall grant the request of the coal operator
or refuse to grant the same, or make such other decision
with respect to such proposed further operations in the vicinity
of any such well as in its judgment is just and reasonable under
all the circumstances and in accordance with law and the pro-
visions of this article: Provided, That a grant by the depart-
ment of a request to mine through a well shall require an
acceptable test to be conducted by the coal operator establish-
ing that such mining through can be done safely. The de-
partment of mines shall docket and keep a record of all
such proceedings substantially as required in the last para-
graph of section three of this article, and from any such final
decision or order of the department of mines, either the well
operator or coal operator, or both, may, within ten days,
appeal to the circuit court of the county in which the well
about which approval of such further operations is involved
is located. The procedure in the circuit court shall be sub-
stantially as provided in section four, the department being
named as a respondent. From any final order or decree of
the circuit court, an appeal may be taken to the supreme court
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-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

1. Ensure the safe recovery of coal and gas;

2. Foster, encourage and promote the fullest practical exploration, development, production, recovery and utilization of this state’s coal and gas, where both are produced from beneath the same surface lands, by establishing procedures, including procedures for the establishment of drilling units, for the location of shallow gas wells without substantially affecting the right of the gas operator proposing to drill a shallow gas well to explore for and produce gas; and

3. Safeguard, protect and enforce the correlative rights of gas operators and royalty owners in a pool of gas to the end that each such gas operator and royalty owner may obtain his just and equitable share of production from such pool of gas.

(b) The Legislature hereby determines and finds that gas found in West Virginia in shallow sands or strata has been produced continuously for more than one hundred years; that the placing of shallow wells has heretofore been regulated by the state for the purpose of ensuring the safe recovery of
coal and gas, but that regulation should also be directed toward
encouraging the fullest practical recovery of both coal and gas
because modern extraction technologies indicate the desirability
of such change in existing regulation and because the energy
needs of this state and the United States require encouragement
of the fullest practical recovery of both coal and gas; that
in order to encourage and ensure the fullest practical recovery
of coal and gas in this state and to further ensure the safe
recovery of such natural resources, it is in the public interest
to enact new statutory provisions establishing a shallow gas
well review board which shall have the authority to regulate
and determine the appropriate placing of shallow wells when
gas well operators and owners of coal seams fail to agree
on the placing of such wells, and establishing specific con-
siderations, including minimum distances to be allowed be-
tween certain shallow gas wells, to be utilized by the shallow
gas well review board in regulating the placing of shallow
wells; that in order to encourage and ensure the fullest prac-
tical recovery of coal and gas in this state and to protect and
enforce the correlative rights of gas operators and royalty
owners of gas resources, it is in the public interest to enact
new statutory provisions establishing a shallow gas well review
board which shall also have authority to establish drilling
units and order the pooling of interests therein to provide all
gas operators and royalty owners with an opportunity to re-
cover their just and equitable share of production.

§22-4B-2. Definitions.

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

2. (1) "Board" means the West Virginia shallow gas well
   review board provided for in section four of this article;

3. (2) "Chairman" means the chairman of the West Virginia
   shallow gas well review board provided for in section four of
   this article;

4. (3) "Coal operator" means any person who proposes to or
   does operate a coal mine;

5. (4) "Coal seam" and "workable coal bed" are inter-
   changeable terms and mean any seam of coal twenty inches
or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(5) "Commission" means the oil and gas conservation commission provided for in section four, article four-a of this chapter;

(6) "Commissioner" means the oil and gas conservation commissioner provided for in section four, article four-a of this chapter;

(7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

(8) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(9) "Department" or "department of mines" means the state department of mines provided for in section two, article two of this chapter;

(10) "Deputy director" means the deputy director for oil and gas provided for in section one-a, article four of this chapter;

(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for himself or for himself and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein shall be considered a "gas operator" to the extent of seven eights of the
gas in that portion of the pool underlying the tract owned by
such person, and a "royalty owner" to the extent of one eighth
of such gas;

(14) "Just and equitable share of production" means, as
to each person, an amount of gas in the same proportion to the
total gas production from a well as that person's acreage
bears to the total acreage in the drilling unit;

(15) "Oil" means natural crude oil or petroleum and
other hydrocarbons, regardless of gravity, which are produced
at the well in liquid form by ordinary production methods and
which are not the result of condensation of gas after it leaves
the underground reservoir;

(16) "Owner" when used with reference to any coal seam,
shall include any person or persons who own, lease or operate
such coal seam.

(17) "Person" means any natural person, corporation,
firm, partnership, partnership association, venture, receiver,
trustee, executor, administrator, guardian, fiduciary or other
representative of any kind, and includes any government or
any political subdivision or any agency thereof;

(18) "Plat" means a map, drawing or print showing the
location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in
a single and separate natural reservoir (ordinarily a porous
sandstone or limestone). It is characterized by a single natural-
pressure system so that production of gas from one part of the
pool tends to or does affect the reservoir pressure throughout
its extent. A pool is bounded by geologic barriers in all
directions, such as geologic structural conditions, impermeable
strata, and water in the formation, so that it is effectively
separated from any other pools which may be present in
the same district or in the same geologic structure;

(20) "Royalty owner" means any owner of gas in place, or
gas rights, to the extent that such owner is not a gas operator
as defined in subdivision (13) of this section;

(21) "Shallow well" means any gas well drilled and com-
pleted in a formation above the top of the uppermost member
of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(22) "Tracts comprising a drilling unit" means all separately owned tracts or portions thereof which are included within the boundary of a drilling unit;

(23) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(24) "Well operator" means any person who proposes to or does locate, drill, operate or abandon any well.

§22-4B-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, under which a coal seam as defined in section two, article four-b, chapter twenty-two and section one, article four, chapter twenty-two of this code, one thousand nine hundred thirty-one, as amended, is located, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of articles four and four-a of this chapter.

(b) This article shall not apply to or affect:

(1) Deep wells;

(2) Oil wells and enhanced oil recovery wells associated with oil wells;

(3) Any shallow well permitted under article four of this chapter prior to 12:01 a.m., August first, one thousand nine hundred seventy-eight, unless such well is, after completion
(whether such completion is prior or subsequent to the effective date of this article), deepened subsequent to the effective date of this article through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower;

(4) Any shallow well as to which no objection is made under section three-b, article four of this chapter;

(5) Wells as defined in subdivision (4), section one, article seven of this chapter; or


(c) The provisions of this article affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m. August first, one thousand nine hundred seventy-eight, and the provisions of article four of this chapter affecting such applications which were in effect immediately prior to the effective date of this article shall apply to all such applications filed prior to 12:01 a.m., August first, one thousand nine hundred seventy eight, with 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.

(a) There is hereby created the "West Virginia Shallow Gas Well Review Board" which shall be composed of three members, two of whom shall be the commissioner and the deputy director. The remaining member of the board shall be a registered professional mining engineer with at least ten years practical experience in the coal mining industry and shall be appointed by the governor, by and with the advice and consent of the Senate: Provided, That any person so appointed while the Senate of this state is not in session shall be permitted to serve in an acting capacity for one year from his appointment or until the next session of the Legislature, whichever is less. As soon as practical after appointment and qualification of the member appointed by the governor, the governor shall convene a meeting of the
board for the purpose of organizing and electing a chairman, who shall serve as such until his successor is elected by the board.

(b) The member of the board appointed by the governor shall be appointed within three months of the effective date of this article. A vacancy in the membership appointed by the governor shall be filled by appointment by the governor within sixty days after the occurrence of such vacancy. Before performing any duty hereunder, each member of the board shall take and subscribe to the oath required by section five, article four of the constitution of West Virginia, and shall serve thereafter until his successor has been appointed and qualified.

(c) The member of the board appointed by the governor shall receive not less than seventy-five dollars per diem while actually engaged in the performance of his duties as a member of the board. Each member of the board shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board.

(d) The department shall furnish office and clerical staff and supplies and services, including reporters for hearings, as required by the board.

§22-4B-5. Same—Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hearings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board upon receipt of a notice from the deputy director that an objection to the proposed drilling or deepening of a shallow well has been filed by a coal seam owner pursuant to section three-b, article four of this chapter or that an objection has been made by the department, (2) upon receipt of an application to establish a drilling unit filed with the board pursuant to section nine of this article, or (3) within twenty days upon the written request by another member of the board. Meetings called pursuant to subdivisions (1) and (2) of this subsection shall be scheduled not less than ten days nor more
than twenty days from receipt by the chairman of the notice
of objection or the application to establish a drilling unit.
Notice of all meetings shall be given to each member of the
board by the chairman at least ten days in advance thereof,
unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board
called pursuant to the provisions of subdivisions (1) and (2),
subsection (a) of this section, the chairman shall also notify
(1) in the case of a notice of objection, the well operator and
all objecting coal seam owners, and (2) in the case of an
application to establish a drilling unit, the applicant, all
persons to whom copies of the application were required to
be mailed pursuant to the provisions of subsection (d), section
nine of this article and all persons who filed written protests
or objections with the board in accordance with the pro-
visions of subsection (c), section nine of this article.

(c) A majority of the members of the board shall con-
stitute a quorum for the transaction of any business. A
majority of the members of the board shall be required to
determine any issue brought before it.

(d) The board is hereby empowered and it shall be its
duty to execute and carry out, administer and enforce the
provisions of this article in the manner provided herein.
Subject to the provisions of section three of this article, the
board shall have jurisdiction and authority over all persons
and property necessary therefor: Provided, That the pro-
visions of this article shall not be construed to grant to
the board authority or power to (1) limit production or output
from or prorate production of any gas well, or (2) fix prices
of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning applications
for drilling permits and drilling units in accordance with the
provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter
twenty-nine-a of this code, and enforce reasonable rules and
regulations necessary to govern the practice and procedure
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 lo-
1 cations and changes on plats; hearings; orders.
2 (a) At the time and place fixed by the chairman for the
3 meeting of the board and for consideration of the objections
4 to proposed drilling filed by coal seam owners pursuant to
5 section three-b, article four of this chapter, the well operator
6 and the objecting coal seam owners present or represented,
7 shall hold a conference with the board to consider the objec-
8 tions. Such persons present or represented at the conference
9 may agree upon either the drilling location as proposed by the
10 well operator or an alternate location. Any change in the
11 drilling location from the drilling location proposed by the
12 well operator shall be indicated on the plat enclosed with the
13 notice of objection filed with the chairman by the deputy di-
14 rector in accordance with the provisions of section three-b,
15 article four of this chapter, and the distance and direction to
16 the new drilling location from the proposed drilling location
17 shall also be shown on such plat. If agreement is reached at
18 the conference by the well operator and such objecting coal
19 seam owners present or represented at the conference, the
20 board shall issue a written order stating that an agreement has
21 been reached, stating the nature of such agreement, and di-
22 recting the department to grant the well operator a drilling
23 permit for the location agreed upon. The original of such
24 order shall be filed with the department within five days after
25 the conference of the board at which the drilling location was
26 agreed upon and copies thereof shall be mailed by registered
27 or certified mail to the well operator and the objecting coal
28 seam owners present or represented at such conference.
29 (b) If the well operator and the objecting coal seam own-
30 ers present or represented at the conference with the board are
31 unable to agree upon a drilling location, then, unless they
32 otherwise agree, the board shall, without recess for more than
33 one business day, hold a hearing to consider the application
for a drilling permit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of a hearing, the board shall issue and file with the department a written order directing it, subject to other matters requiring approval of the department, to:

(1) Refuse a drilling permit; or
(2) Issue a drilling permit for the proposed drilling location; or
(3) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or
(4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

(c) The written order of the board shall contain findings of fact and conclusions based thereon concerning the following safety aspects, and no drilling permit shall be issued for any drilling location where the board finds from the evidence that such drilling location will be unsafe:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or any coal mine already surveyed and platted but not yet being operated;
(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;
(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and
(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal and gas.
The written order of the board shall also contain findings of fact and conclusions based thereon concerning the following:

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article six, chapter twenty of this code;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and gas;

(9) The distance limitations established in section eight of this article;

(10) The practicality of locating the well on a uniform pattern with other wells;

(11) The surface topography and use; and

(12) Whether the order of the board will substantially affect the right of the gas operator to explore for and produce gas.

Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22-4B-8. Distance limitations.

(a) If the well operator and the objecting coal seam owners present or represented at the time and place fixed by the chairman for consideration of the objections to the proposed drilling location are unable to agree upon a drilling location, then the written order of the board shall direct the
department to refuse to issue a drilling permit unless the following distance limitations are observed:

(1) For all shallow wells with a depth less than three thousand feet, there shall be a minimum distance of one thousand feet from the drilling location to the nearest existing well as defined in subsection (b) of this section; and

(2) For all shallow wells with a depth of three thousand feet or more, there shall be a minimum distance of one thousand five hundred feet from the drilling location to the nearest existing well as defined in subsection (b) of this section, except that where the distance from the drilling location to such nearest existing well is less than two thousand feet but more than one thousand five hundred feet and a coal seam owner has objected, the gas operator shall have the burden of establishing the need for the drilling location less than two thousand feet from such nearest existing well. Where the distance from the drilling location proposed by the operator or designated by the board to the nearest existing well as defined in subsection (b) of this section is greater than two thousand feet, distance criterion will not be a ground for objection by a coal seam owner.

(b) The words “existing well” as used in this section shall mean (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same target formation or drilled for the purpose of producing from the same target formation, and (ii) any unexpired, permitted drilling location for a well to the same target formation.

(c) The minimum distance limitations established by this section shall not apply if the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting oil or gas well and the proposed well will neither require enlargement of such pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

(d) Nothing in this article shall be construed to empower the board to order the department to issue a drilling permit to any person other than the well operator filing the application which is the subject of the proceedings.
§22-4B-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the department to refuse a drilling permit, the gas operator may apply to the board for the establishment of a drilling unit encompassing a contiguous tract or tracts if such gas operator believes that such a drilling unit will afford one well location for the production of gas from under the tract on which the drilling permit was sought, and will be agreeable to the coal seam owners.

(b) An application to establish a drilling unit shall be filed with the board and shall contain:

1. The name and address of the applicant;
2. A plat prepared by a licensed land surveyor or registered professional engineer showing the boundary of the proposed drilling unit, the district and county in which such unit is located, the acreage of the proposed drilling unit, the boundary of the tracts which comprise the proposed drilling unit, the names of the owners of record of each such tract, the proposed well location on the proposed drilling unit, and the proposed well location for which the department refused to issue a drilling permit;
3. The names and addresses of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit;
4. The names and addresses of the gas operators of the tracts which comprise the proposed drilling unit;
5. The approximate depth and target formation to which the well for the proposed drilling unit is to be drilled;
6. A statement indicating whether a voluntary pooling agreement has been reached among any or all of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit and the gas operators of such tracts;
7. An affidavit of publication of the notice of intent to file an application to establish a drilling unit as required in subsection (c) of this section; and
(8) Such other pertinent and relevant information the
board may prescribe by reasonable rules and regulations
promulgated in accordance with the provisions of section six
of this article.

(c) Prior to the filing of an application to establish a
drilling unit, the applicant shall cause to be published, as a
Class II legal advertisement in accordance with the provisions
of article three, chapter fifty-nine of this code, a notice of
intent to file an application to establish a drilling unit. Such
notice shall contain the information required by subdivisions
(1), (4) and (5), subsection (b) of this section, the name
of the royalty owner of the gas underlying the proposed well
location on the proposed drilling unit, plus an abbreviated
description, or, at the applicant's option, a plat of the drilling
unit, disclosing the county and district wherein the proposed
drilling unit is to be located, the post office closest to the
proposed drilling unit, a statement that the applicant will
deliver a copy of the plat required by subdivision (2) of sub­
section (b) to any person desiring the same, the date upon
which the applicant intends to file the application to establish a
drilling unit, and a statement that written protests and objec­
tions to such application may be filed with the board until a
specified date, which date shall be at least ten days after the
date upon which the applicant intends to file the application to
establish a drilling unit. The publication area of the notice re­
quired by this subsection shall be the county or counties in
which the proposed drilling unit is to be located.

(d) At the time an application to establish a drilling unit is
filed, the applicant shall forward a copy thereof by registered
or certified mail to each and every person whose name and
address were included on the application in accordance with
the provisions of subdivisions (3) and (4), subsection (b)
of this section. With each such application there shall be
enclosed a notice (the form for which shall be furnished by
the board on request) addressed to each such person to whom
a copy of the application is required to be sent, informing him
that such application is being mailed to him respectively by
registered or certified mail, pursuant to the requirements of
this article: Provided, That the application and notice need
not be forwarded to those royalty owners or gas operators
within the boundary of the proposed drilling unit who have
previously agreed to voluntary pooling by separately stated
document or documents empowering the gas operator, by
assignment or otherwise, unilaterally to declare a unit.

§22-4B-10. Establishment of drilling units; hearings; orders.

(a) At the time and place fixed by the chairman for the
meeting of the board and for consideration of an application
to establish a drilling unit, the applicant shall present proof
that the drilling location on the proposed drilling unit has
been agreed to by all of the owners of the coal seams under-
lying such drilling location; and thereafter the applicant, the
royalty owners of the gas underlying the tracts comprising
the unit, and the gas operators of the tracts comprising the
unit, or such of them as are present or represented, shall hold
a conference with the board to consider the application.
Such persons present or represented at the conference may
agree upon the boundary of the drilling unit as proposed by
the applicant or as changed to satisfy all valid objections of
those persons present or represented. Any change in the
boundary of the drilling unit from the boundary proposed
by the applicant shall be shown on the plat filed with the
board as part of the application. If agreement is reached
at the conference upon the boundary of the drilling unit
among the applicants, the royalty owners of the gas under-
lying the tracts comprising the drilling unit and the gas
operators of the tracts comprising such unit, or such of them
as are present or represented, and if such agreement is ap-
proved by the board, the board shall issue a written order
establishing and specifying the boundary of the drilling unit.

(b) If the applicant, the royalty owners of the gas under-
lying the tracts comprising the drilling unit and the gas
operators of the tracts comprising such unit, or such of them
as are present or represented at the time and place fixed
by the chairman for consideration of the application, are
unable to agree upon the boundary of the drilling unit, then
the board shall hold a hearing without recess of more than
one business day to consider the application to establish a
drilling unit. All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and govern
such hearing. Within twenty days after the close of the
hearing, the board shall issue a written order either estab-
lishing a drilling unit or dismissing the application. If the
board determines to establish a drilling unit, the order shall
specify the boundary of such drilling unit. In determining
whether to grant or deny an application to establish a drilling
unit, the board shall consider:

(1) The surface topography and property lines of the lands
comprising the drilling unit;

(2) The correlative rights of all gas operators and royalty
owners therein;

(3) The just and equitable share of production of each
gas operator and royalty owner therein;

(4) Whether a gas operator or royalty owner objecting to
the drilling unit has proved by clear and convincing evidence
that the drilling unit is substantially smaller than the area
that will be produced by the proposed well; and

(5) Other evidence relevant to the establishment of the
boundary of a drilling unit.

(c) The board shall not grant an application to establish a
drilling unit, nor shall it approve any drilling unit, unless
the board finds that:

(1) The applicant has proved that the drilling location on
the drilling unit has been agreed to by all of the owners of
the coal seams underlying such drilling location;

(2) The department has previously refused to issue a dril-
ling permit on one of the tracts comprising the drilling unit
because of an order of the board;

(3) The drilling unit includes all acreage within the mini-
imum distance limitations provided by section eight of this
article, unless the gas operators and royalty owners of any
excluded acreage have agreed to such exclusion; and

(4) The drilling unit includes a portion of the acreage
from under which the well operator intended to produce gas
under the drilling permit which was refused.
OIL AND GAS

§22-4B-11. Pooling of interests in a drilling unit; limitations.

(a) Whenever the board establishes a drilling unit pursuant to the provisions of sections nine and ten of this article, the order establishing such drilling unit shall include an order pooling the separately owned interests in the gas to be produced from such drilling unit.

(b) If a voluntary pooling agreement has been reached between all persons owning separate operating interests in the tracts comprising the drilling unit, the order of the board shall approve such agreement.

(c) If no voluntary pooling agreement is reached prior to or during the hearing held pursuant to subsection (b), section ten of this article, then at such hearing the board shall also determine the pooling of interests in the drilling unit.

(d) Any order of the board pooling the separately owned interests in the gas to be produced from the drilling unit shall be upon terms and conditions which are just and equitable and shall authorize the production of gas from the drilling unit; shall designate the applicant as the operator to drill and operate such gas well; shall prescribe the procedure by which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, abandoning and reclaiming such well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including all reasonable charges for super-

(d) All orders issued by the board under this section shall contain findings of fact and conclusions based thereon as required by section three, article five, chapter twenty-nine-a of this code and shall be filed with the department within twenty days after the hearing. Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.
vision and for interest on past-due accounts, by all those who
elect to participate therein.

(e) Upon request, any such pooling order shall provide an
owner of an operating interest an election to be made within
ten days from the date of the pooling order, (i) to participate
in the risks and costs of the drilling of the well, or (ii) to par-
ticipate in the drilling of the well on a limited or carried basis
on terms and conditions which, if not agreed upon, shall be
determined by the board to be just and equitable. If the
election is not made within the ten-day period, such owner
shall be conclusively presumed to have elected the limited or
carried basis. Thereafter, if an owner of any operating interest
in any portion of the pooled tract shall drill and operate, or
pay the costs of drilling and operating, a well for the benefit
of such nonparticipating owner as provided in the order of the
board, then such operating owner shall be entitled to the share
of production from the tracts or portions thereof pooled ac-
cruing to the interest of such nonparticipating owner, ex-
clusive of any royalty or overriding royalty reserved with re-
spect to such tracts or portions thereof, or exclusive of one
eighth of the production attributable to all unleased tracts or
portions thereof, until the market value of such nonpartici-
pating owner's share of the production, exclusive of such
royalty, overriding royalty or one eighth of production, equals
double the share of such costs payable by or charged to the
interest of such nonparticipating owner.

(f) In no event shall drilling be initiated or completed on
any tract, where the gas underlying such tract has not been
severed from the surface thereof by deed, lease or other title
document, without the written consent of the person who owns
such tract.

(g) All disputes which may arise as to the costs of drilling
and operating a well under a pooling order issued pursuant to
this section shall be resolved by the board within ninety days
from the date of written notification to the board of the exis-
tence of such dispute.

§22-4B-12. Effect of order establishing drilling unit or pooling of
interests; recordation.

(a) An order issued by the board establishing a drilling unit
and ordering the pooling of interests therein shall not entitle the gas operator designated in such order to drill a well on such drilling unit until such gas operator shall have received a drilling permit in accordance with the provisions applicable to alternative drilling locations set out in section three-b of article four of this chapter. All orders issued by the board establishing a drilling unit shall be filed with the department and shall also direct the department to issue a drilling permit for the drilling location agreed to by all of the owners of the coal seams underlying such drilling location.

(b) A certified copy of any order of the board establishing a drilling unit or a pooling of interests shall be mailed by the board to the clerk of the county commission of each county wherein all or any portion of the drilling unit is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recordation from the time noted thereon by such clerk shall be notice of the order to all persons.


(a) Any person adversely affected by an order of the board shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The board, with the written approval of the attorney general, may employ special counsel to represent the board at any such appeal proceedings.
§22-4B-14. Operation on drilling units.

1 All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a well drilled thereon.


1 No agreement between or among gas operators, lessees or other owners of gas rights in gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

§22-4B-16. Injunctive relief.

(a) Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any rule and regulation promulgated by the board hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen of this article.

(b) Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel
compliance with the provisions of this article, the rules and
regulations promulgated by the board hereunder and all
orders of the board. The court may issue a temporary in-
junction in any case pending a decision on the merits of
any application filed. Any other section of this code to the
contrary notwithstanding, the state shall not be required to
furnish bond or other undertaking as a prerequisite to ob-
taining mandatory, prohibitory or temporary injunctive relief
under the provisions of this article.

(c) The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals. Any such appeal shall be sought in the manner
and within the time provided by law for appeals from circuit
courts in other civil actions.

(d) The board shall be represented in all such proceedings
by the attorney general or his assistants and in such pro-
ceedings in the circuit courts by the prosecuting attorneys of
the several counties as well, all without additional compensa-
tion. The board, with the written approval of the attorney
general, may employ special counsel to represent the board in
any such proceedings.

(e) If the board shall refuse or fail to apply for an in-
junction to enjoin a violation or threatened violation of any
provision of this article, any rule and regulation promulgated
by the board hereunder or any order or final decision of the
board, within ten days after receipt of a written request to
do so by any person who is or will be adversely affected by
such violation or threatened violation, the person making
such request may apply in his own behalf for an injunction
to enjoin such violation or threatened violation in any court
in which the board might have brought suit. The board shall
be made a party defendant in such application in addition to
the person or persons violating or threatening to violate any
provision of this article, any rule and regulation promulgated
by the board hereunder or any order of the board. The
application shall proceed and injunctive relief may be granted
without bond or other undertaking in the same manner as
if the application had been made by the chairman.
§22-4B-17. Penalties.

(a) Any person who violates any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board other than a violation governed by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.

(b) Any person who, with the intention of evading any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board shall make or cause to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order or final decision of the board, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.


This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this 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-3. Proceedings to be open; public notice of meetings.
§6-9A-4. Exceptions.
§6-9A-6. Enforcement by injunction; actions in violation of article voidable.
§6-9A-7. Violation of article; penalties.


1 As used in this article:

2 (1) “Decision” means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present;

7 (2) “Executive session” means any meeting or part of a meeting of a governing body which is closed to the public;

10 (3) “Governing body” means the members of any public body having the authority to make decisions for or recommendations to a public body on policy or administration, the membership of which governing body consists of two or more members;
(4) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter, but such term does not include (a) any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or court of claims proceeding, (b) any on-site inspection of any project or program, or (c) any political party caucus;

(5) "Political subdivision" means any county, county board of education or municipality in or any other political subdivision of this state;

(6) "Public body" means any executive, legislative or administrative body or agency of this state or any political subdivision, or any commission, board, council, bureau, committee or subcommittee or any other agency of any of the foregoing, and such term shall not be construed to include the judicial branch of government, state or local; and

(7) "Quorum" means, unless otherwise defined by applicable law, a simple majority of the constituent membership of a governing body.

§6-9A-3. Proceedings to be open; public notice of meetings.

Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public. Any governing body may make and enforce reasonable rules and regulations for attendance at any meeting where there is not room enough for all members of the public who wish to attend, and this article shall not be construed to prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised.

Each governing body shall promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are
made available, in advance, to the public and news media, except in the event of an emergency requiring immediate official action.

§6-9A-4. Exceptions.

No provision of this article shall be construed to prevent the governing body of a public body from holding an executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under this article for the holding of such executive session and has presented it to the governing body and to the general public, but no decision shall be made in such executive session.

An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public body as defined in this article for the following:

(1) Matters of war, threatened attack from a foreign power, civil insurrection or riot; or

(2) The appointment, employment, retirement, promotion, demotion, disciplining, resignation, discharge, dismissal or compensation of any public officer or employee, or other personnel matters, or for the purpose of conducting a hearing on a complaint against a public officer or employee, unless such public officer or employee requests an open meeting; or

(3) The disciplining, suspension or expulsion of any student in any public school or public college or university, unless such student requests an open meeting; or

(4) The issuance, effecting, denial, suspension or revocation of a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking such license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting; or

(5) The physical or mental health of any person, unless such person requests an open meeting; or
(6) Matters which, if discussed in public, would be likely to affect adversely the reputation of any person; or

(7) Any official investigation or matters relating to crime prevention or law enforcement; or

(8) The development of security personnel or devices; or

(9) Matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving competition which, if made public, might adversely affect the financial or other interest of the state or any political subdivision.


Each governing body shall provide for the preparation of written minutes of all of its meetings. All such minutes shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, the vote of each member, by name.

Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with the provisions of section four of this article.

§6-9A-6. Enforcement by injunction; actions in violation of article voidable.

The circuit court in the county where the public body regularly meets or the judge thereof in vacation shall have jurisdiction to issue an injunction to enforce the purposes
of this section upon petition by any citizen of this state who can show a good faith and valid reason for making such application. No bond shall be required unless such petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

Any actions taken or decisions made in violation of this article may be voidable upon petition filed within thirty days after such actions or decisions to the aforesaid circuit court or the judge thereof in vacation and such court may order that such actions taken or decision made be performed in compliance with the provisions of this article.

§6-9A-7. Violation of article; penalties.

Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not more than ten days, or both fined and 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, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to denial, suspension 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 the contrary, no certificate, license, registration or authority issued under the provisions of this chapter may be suspended or revoked without a prior hearing before the board or court issuing said certificate, license, registration or authority.

7 (b) In all proceedings before a board or court for the suspension or revocation of any certificate, license, registration or authority issued under the provisions of this chapter, a statement of the charges against the holder thereof and a notice of the time and place of hearing shall be served upon such person as a notice is served under section one, article two, chapter fifty-six of this code, at least thirty days prior to the hearing, and he may appear with witnesses and be heard in person, by counsel, or both. The board may take such oral or written proof, for or against the accused, as it may deem advisable. If upon such hearing the board finds that the charges are true, it may suspend or revoke the certificate, license, registration or authority, and such suspension or revocation shall take from the person all rights and privileges acquired thereby.

23 (c) Any person denied a license, certificate, registration or authority who believes such denial was in violation of this article or the article under which said license, certificate, registration or authority is authorized shall be entitled to a hearing on the action denying said license, certificate, registration or authority. Hearings under this subsection shall be in accordance with the provisions for hearings set forth in subsection (b).
(d) A stenographic report of each proceeding on the denial, suspension or revocation of a certificate, license, registration or authority shall be made at the expense of the board and a transcript thereof retained in its files. The board shall make a written report of its findings, which shall constitute part of the record.

(e) All proceedings under the provisions of this section shall be subject to review by the supreme court of appeals.
§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.


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 occu-
5 pational 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.
(d) "Occupational therapy" means the evaluation, treatment and aid in diagnosis of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process in order to achieve optimum functioning and for prevention and health maintenance. Specific occupational therapy services include, but are not limited to, activities of daily living (ADL); the design, fabrication and application of splints; sensorimotor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaption of physical environments for the handicapped. These services are provided to individuals or groups through medical, health, educational and social systems and for the maintenance of health through these systems.

(e) "Occupational therapist" means a person licensed to practice occupational therapy as defined in this article, and whose license is in good standing.

(f) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the general supervision of the licensed occupational therapist, and whose license is in good standing. As contained in this section, the term "general supervision" means initial direction and periodic inspection of the actual activities; however, the supervising licensed occupational therapist need not always be physically present or on the premises when the licensed assistant is performing services.

(g) "Occupational therapy aide" means a person who assists in the practice of occupational therapy, who works under the direct supervision of an occupational therapist and the occupational therapy assistant, and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy.
As contained in this section, the term "direct supervision" shall mean the actual physical presence of a licensed occupational therapist or licensed occupational therapy assistant.

§30-28-4. License required; treatment by referral only; limitation on practice by assistant.

(a) No person may present himself as an occupational therapist or occupational therapy assistant in this state unless she or he is licensed in accordance with the provisions of this article. No firm, partnership, association or corporation may advertise or otherwise offer to provide or convey the impression that it is providing occupational therapy unless an individual holding a current valid license or permit under this article is or will at the appropriate time be rendering the occupational therapy services to which reference is made.

(b) A licensed occupational therapist shall not treat persons by occupational therapy or otherwise other than referral by a licensed physician or surgeon, psychologist or psychiatrist, dentist, osteopathic physician or surgeon, or chiropodist or podiatrist. A licensed occupational therapy assistant shall not practice occupational therapy other than in accordance with the definitional requirements of an occupational therapy assistant as specified 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.

(a) There is hereby established the West Virginia board of occupational therapy which shall consist of five members appointed by the governor by and with the advice and consent of the Senate. The members of the board shall be citizens of the United States and residents of this state for at least one year prior to their appointment. Three members shall have been engaged in rendering occupational therapy services to the public by teaching or performing research in occupational therapy for at least three years immediately preceding...
their appointment or shall have been a registered occup-
cupational therapist for at least three years immediately
preceding their appointment. One such member so ap-
pointed shall have been engaged in rendering occupa-
tional therapy services as a registered occupational
therapy assistant for at least three years immediately
preceding his appointment. Such appointees shall at
all times be holders of valid licenses for the practice of
occupational therapy in the state. Except for the mem-
ers of the first board appointed from the list submitted
by the association, all of such members shall fulfill
the requirements for licensure under this article. One
member shall be appointed by the governor to represent
the public.

(b) The board shall, within ninety days after the
effective date of this article, be selected as provided in
subsection (a). The members of the first board shall
serve the following terms: Two members for a term
of one year, two members for a term of two years, and
one member for a term of three years. At the expiration
of the above terms, board members shall be appointed
in the same manner as the initial appointment for a
period of three years, but no person shall be appointed
to serve more than two consecutive terms.

(c) Terms shall begin on the first day of the calendar
year and end on the last day of the calendar year or
until successors are appointed, except for the first mem-
ers who shall serve through the last calendar day of
the year in which they are appointed before commenc-
ing the terms prescribed by this section.

(d) When a vacancy occurs on the board, the board
shall appoint a member to fill the unexpired
term.

(e) The governor, after notice and opportunity for
hearing by the board, may remove any member of the
board for neglect of duty, incompetence, revocation or
suspension of the member's license, or other dishonor-
able conduct. After such removal, or vacancy due to
other reasons, the board shall appoint a successor to
the unexpired term. The successor shall meet the quali-
fications of board members as established in subsection (a) of this section.

(f) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and shall meet during the first month of the calendar year to select a chairman. At least one additional meeting shall be held before the end of the calendar year. Further meetings may be convened at the call of the chairman or on the request of any three board members.

(g) Members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Such members may be paid reasonable compensation not to exceed fifty dollars per day for days spent in performance of their duties.

(h) All moneys paid to the board shall be accepted by a person designated by the board and deposited by her/him with the treasurer of the state and credited to an account to be known as the "West Virginia Board of Occupational Therapy." The compensation of and the reimbursement of all reasonable and necessary expenses actually incurred by the members of the board and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state's general revenue fund shall be expended for such purpose.

§30-28-6. Powers and duties of board.

(a) The board shall administer, coordinate and enforce the provisions of this article.

(b) The board shall have the responsibility of evaluating the qualifications of applicants for licensure under this article.

(c) The board shall determine that the applicant successfully completed the academic requirements of an educational program in occupational therapy. For an occupational therapist, such a program shall be accredited by the American medical association in collaboration with the American occupational therapy as-
sociation. For an occupational therapy assistant, such program shall be approved by the American occupational therapy association.

(d) The board shall prepare or approve all examinations of applicants for license at least twice a year, determine the qualifications and authorize the issuance of licenses to qualified occupational therapists and occupational therapy assistants; renew, suspend or revoke licenses in the manner provided.

(e) The board shall appoint representatives or contract with qualified testing services to conduct or supervise examinations and designate time and place for examining applicants.

(f) The board shall establish standards for the continuing professional competence of persons subject to this article.

(g) The board shall establish fees and maintain a register of all persons holding a license and a record of all inspections made.

(h) The board shall conduct such hearings and keep such records and minutes as are necessary to carry out its functions. It shall provide reasonable public notice to the appropriate persons of the time and place of all hearings authorized under this article in such a manner and at such times as it may determine by its rules and regulations.

(i) The board shall adopt rules and regulations relating to professional conduct to carry out the policy of this article including, but not limited to, regulations relating to professional licensure and the establishment of ethical standards of practice. Any such rules and regulations so adopted shall be subject to the provisions of chapter twenty-nine-a of this code.

(j) The board may investigate complaints and allegations concerning the violation of provisions of this article and may examine witnesses in connection with these investigations.
(k) The board shall make an annual report to the governor, which report shall contain an account of duties performed, actions taken and appropriate recommendations.

(l) The board is empowered to prescribe and publish reasonable application fees. Such fees shall be commensurate with the cost of fulfilling the duties of the board as defined by this article.

§30-28-7. License required; persons and practices not affected.

(a) No person may hold himself out as an occupational therapist or an occupational therapy assistant in this state unless he is licensed in accordance with the provisions of this article.

(b) Nothing in this article shall be construed as preventing or restricting the practice, services or activities of:

(1) Any person licensed under any other law of this state, including physicians, nurses, clinical psychologists, speech pathologists and audiologists, dentists and physical therapists, from engaging in the profession or occupation for which he is licensed;

(2) Any person employed as an occupational therapist or an occupational therapy assistant by the government of the United States, if such a person provides occupational therapy solely under the direction or control of the organization by which he is employed;

(3) Any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program which is accredited by the American occupational therapy association in collaboration with the American medical association, or in an educational program approved by the American occupational therapy association, and if such person is designated by a title which clearly indicates his status as a student or trainee;

(4) Any person fulfilling the supervised field work
experience, if such activities and services constitute a part of the experience necessary to meet the requirements of section eight of this article;

(5) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than ninety consecutive days a calendar year in association with an occupational therapist licensed under this article, if such person meets the qualification for license under this article, except for the qualifying examination; or

(6) Any person performing occupational therapy services in this state not licensed under this article, if such services are performed for no more than one hundred eighty consecutive calendar days in a calendar year and if:

(A) Such a person is licensed under the law of another state which has licensure requirements equivalent to the requirements of this article; or

(B) Such a person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) established by the American occupational therapy association.

§30-28-8. Qualifications of applicants for license.

(a) To be eligible for a license to engage in the practice of occupational therapy, the applicant must:

(1) Be of good moral character;

(2) Have successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, with concentration in biologic or physical science, psychology and sociology, and with education in selected manual skills. For an occupational therapist, such a program shall be accredited by the American medical association in collaboration with the American occupational therapy association. For an occupational therapy assistant, such program shall be approved by the American occupational therapy association;
(3) Have successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where she or he met the academic requirements. For an occupational therapist, a minimum of six months of supervised field work experience is required. For an occupational therapy assistant, a minimum of two months of supervised field work experience is required; and

(4) Have passed an examination conducted by the board as provided in section six of this article.

(b) An applicant who has practiced as an occupational therapy assistant for four years and has successfully completed the supervised field work experience required in subdivision (3) of subsection (a) may take the examination to be licensed as an occupational therapist without meeting the educational requirements for occupational therapists made otherwise applicable under subdivision (2) of subsection (a).


(a) A person applying for licensure shall demonstrate her or his eligibility in accordance with the requirements of section eight of this article, and shall make application for examination to the board at least thirty days prior to the date of examination upon a form and in such a manner as the board shall prescribe. Such application shall be accompanied by the fee prescribed by section fifteen of this article, which fee shall not be refunded. A person who fails an examination may make reapplication three times for reexamination accompanied by the prescribed fee.

(b) Each applicant for licensure under this article shall be examined by the board in written examination to test his knowledge of the basic and clinical sciences relating to occupational therapy, and occupational therapy theory and practice, including the professional skills and judgment of the applicant in the utilization of occupational 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.
(b) The board shall issue a limited permit to persons who have completed the education and experience requirements of this article. This permit shall allow the person to practice occupational therapy under the supervision of an occupational therapist who holds a current license in this state and shall be valid until the date on which the results of the next qualifying examination have been made public. This limited permit shall not be renewed if the applicant has failed the examination.

(c) The board shall issue a limited permit to an occupational therapist or an occupational therapy assistant who has graduated from an occupational therapy curriculum of a foreign country or of a territory or possession of the United States. Such program shall be equivalent to academic requirements for graduates of occupational therapy programs in the United States and shall be satisfactory to the board. This permit shall allow the person to practice under the supervision of a licensed occupational therapist. A limited permit shall be valid for one year at which time the holder shall apply to the board for licensure. A limited permit shall become null and void if the holder fails to pass a licensing examination.

(d) Any person who is issued a license as an occupational therapist under the terms of this article may use the words “occupational therapist registered,” “licensed occupational therapist,” or “occupational therapist,” or he may use the letters “O.T.R.,” “L.O.T.,” or “O.T.,” in connection with his name or place of business to denote registration hereunder.

(e) Any person who is issued a license as an occupational therapy assistant under the terms of this article may use the words “occupational therapy assistant,” “licensed occupational therapy assistant,” or “certified occupational therapy assistant” or may use the letters “O.T.A.,” “L.O.T.A.,” or “C.O.T.A.,” in connection with his name or place of business to denote his registration hereunder.
§30-28-12. Renewal of license.

1 (a) All licenses under this article shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the board upon the payment of a renewal fee. The board may establish additional requirements for license renewal which provide evidence of continued competency. The board may provide for late renewal of a license upon payment of a late renewal fee. Any license which has not been restored within five years following its expiration may not be renewed, restored or reissued thereafter. The holder of such a canceled license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license.

(b) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity or in other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and 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 hearing, have the power to deny or refuse to renew, suspend or revoke the license of, or impose probationary conditions upon, any licensee who has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare or safety of the public. Such unprofessional conduct includes:
(1) Obtaining a license by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct as defined by the rules established by the board;

(4) Violating any lawful order, rule or regulation rendered or adopted by the board; or

(5) Violating any provision of this article.

(b) Such denial, refusal to renew, suspension, revocation or imposition of probationary condition upon a license may be ordered by the board in a decision made after a hearing in the manner provided by the rules adopted by the board. One year from the date of the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement and shall be required to hold a hearing to consider such reinstatement.


(a) Whenever the board shall deny an application for any original or renewal license or any application for a temporary permit or shall suspend or revoke any license or temporary permit it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or temporary permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said copy of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing.
A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or temporary permit or denying an application for a renewal of license. The board may require the person demanding such hearing to give reasonable security for the costs thereof, and, if such person does not substantially prevail at such hearing, such costs shall be assessed against him and may be collected by a civil action or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set time and place thereof not less than ten nor more than thirty days thereafter. The person demanding the hearing may be granted one continuance as a matter of right and further continuances for good cause shown.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of chapter twenty-nine-a of this code and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney admitted to practice law in this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.
(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section sixteen of this article.


1 The board shall prescribe and publish, in the manner established by its rules, fees in amounts determined by 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.

Such fees shall be commensurate with the cost of fulfilling the duties of the board as defined by this 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 board rendered after a hearing held in accordance with the provisions of section fourteen of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.
The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§30-28-17. Penalties.

(a) Any person who violates any provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars and not more than five hundred dollars. A license held by any person convicted under this section shall be forfeited and revoked forthwith for one year from the date of such conviction.

(b) It is unlawful for any person who is not registered under this article as an occupational therapist or as an occupational therapy assistant whose registration has been suspended or revoked to use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant," or "occupational therapy aide," or the letters "O.T.," "L.O.T.," "O.T.R.," "O.T.A.," "L.O.T.A.," "C.O.T.A.," or any other words, letters, abbreviations or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant, or to show in any way, orally, in writing, in print, or by sign, directly or by implication, or to represent himself as an occupational therapist, occupational therapy assistant or occupational therapy aide.
§30-28-18. Actions to enjoin violations.

1 Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations of any part thereof has occurred, is occurring, or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen of this article.

18 Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated hereunder and all orders and final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

26 The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

33 The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation.
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.

(a) Pay and allowances for officers and men of the national guard for drill, encampment or other duty for training prescribed or ordered by the federal government, shall be such as are provided by the laws of the United States.

(b) Officers and men of the national guard in active service of the state shall receive the same pay and allowances, in accordance with their rank and service, as are prescribed for the armed forces of the United States: Provided, That no member of the national guard shall receive base pay of less than forty dollars per day while he is in active service of the state.

(c) Notwithstanding any of the provisions of this article, members of the national guard, may, with their consent, perform without pay, or without pay and allowances any duties prescribed by section thirteen of this article pursuant to competent orders therefor: Provided, That necessary expense may be furnished such personnel within the discretion of the adjutant general.
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 salaries pursuant to appropriation by the Legislature, payable at least monthly as follows:

4 Any lieutenant colonel shall receive an annual salary of twenty thousand five hundred eighty dollars; any major shall receive an annual salary of eighteen thousand six hundred twenty-four dollars; any captain shall receive an annual salary of seventeen thousand one hundred twenty-four dollars; any lieutenant shall receive an annual salary of sixteen thousand eighty dollars; any master sergeant or first sergeant shall receive an annual salary of fifteen thousand eighty-four dollars; any sergeant shall receive an annual salary of fourteen thousand three hundred fifty-two dollars; any corporal shall receive an annual salary of thirteen thousand five hundred eighty-four dollars.
dollars; any trooper first class shall receive an annual salary of twelve thousand seven hundred fifty-six dollars; and any newly enlisted trooper shall receive a salary of nine hundred twenty-three dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty each such trooper shall receive, during the remainder of his first year’s service, a salary of nine hundred ninety-eight dollars monthly. During the second year of his service in the department each trooper shall receive an annual salary of twelve thousand two hundred fifty-two dollars; during the third year of his service each such trooper shall receive an annual salary of twelve thousand four hundred thirty-two dollars; and during the fourth year and fifth year of such trooper’s service and for each year thereafter he shall receive an annual salary of twelve thousand six hundred dollars. Each member of the department whose salary is specified herein shall receive and be entitled to an increase in salary over that herein-before set forth, for grade in rank, based on length of service, including that heretofore and hereafter served with the department, as follows: At the end of five years of service with the department, such member shall receive a salary increase of three hundred dollars to be effective during his next three years of service and a like increase at three-year intervals thereafter, with such increases to be cumulative.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the department in service at the time this article becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

The Legislature finds and declares that there is litigation pending in the circuit court of Kanawha County on the question whether members of the department of public safety are covered by the provisions of the state wage and hour law, article five-c, chapter twenty-one of this code. The Legislature further finds and declares that because of the unique duties of members of the department,
it is not appropriate to apply said wage and hour provisions to them. Accordingly, members of the department of public safety are hereby excluded from the provisions of said wage and hour law. The express exclusion hereby enacted shall not be construed as any indication that such members were or were not heretofore covered by said wage and hour law.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training may receive supplemental pay as hereinafter provided.

The superintendent shall, within thirty days after the effective date hereof, promulgate a rule or regulation to establish the number of hours per month which shall constitute the standard work month for the members of the department. Such rule or regulation shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of such supplemental payment when hours are worked in excess of said standard work month. Such rule or regulation shall be promulgated pursuant to the provisions of chapter twenty-nine-a of the code. The superintendent shall certify monthly to the department's payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment.

The supplemental payment shall be in an amount equal to one and one-half percent of the annual salary of a trooper during his second year of service, not to exceed one hundred seventy-five dollars monthly. The superintendent and civilian employees of the department shall not be eligible for any such supplemental payments.

Each member of the department, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his duties, a bond with security in the sum of five thousand dollars payable to the state of West Virginia, conditioned upon the faithful performance of his duties, and such bond shall be ap-
proven as to form by the attorney general and to suffi-
ciency by the governor.

Any member of the department who is called to per-
form active duty for training or inactive duty training in
the national guard or any reserve component of the armed
forces of the United States annually shall be granted upon
request leave time not to exceed thirty days for the pur-
pose of performing such active duty for training or in-
active duty training, and the time so granted shall not be
deducted from any leave accumulated as a member of the
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 sec-
tion one-a, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COM-
MISSION.

§24-2-1a. Authority of commission to enter and inspect rail-
road property.

The commission or its duly authorized representatives
are hereby authorized and empowered to enter and in-
spect any property, premise or place, owned or operated
by a railroad, whether fixed facilities or rolling stock,
including, but not limited to, locomotives, cars and
caboses, stationary or in motion, at any reasonable time
for the purpose of ascertaining the state of compliance
with this article and rules and regulations in force pur-
suant thereto. No person shall refuse entry or access to
the commission or any authorized representative of the
commission who requests entry for purposes of inspec-
tion, and who presents appropriate credentials; nor shall
any person obstruct, hamper or interfere with any such
inspection.

CHAPTER 91
(Com. Sub. for H. B. 1559—By Mr. Donley and Mr. Brands)

[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 con-
tracts; 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 PUB-
LIC WORKS PROJECTS.

§5-19-1. Definitions.
§5-19-2. Preference for domestic aluminum, glass and steel products; manda-
tory contract provision; exceptions.
§5-19-3. Contract payments; recovery in cases of violation of article.
§5-19-1. Definitions.

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

“Public agency” means the state of West Virginia, counties, municipalities, towns, boards of education, public service districts and other political subdivisions of this state.

“Public works” includes roads, highways, streets, bridges, sidewalks, sewage systems, buildings, engineering and architectural works, and any other structure, facility or improvement constructed or undertaken by a public agency.

“Aluminum, glass and steel products” means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from aluminum, glass and steel; “domestic aluminum, glass and steel products” means aluminum, glass and steel products made in the United States.

§5-19-2. Preference for domestic aluminum, glass and steel products; mandatory contract provision; exceptions.

(a) Every public agency shall require that every contract and subcontract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the chief executive or governing body of such agency, as the case may be, determines after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided, That this article does not apply to any public works contract awarded in an amount less than fifty thousand dollars.

(b) The offered or bid price of domestic aluminum, glass or steel products is not unreasonable unless it is more than twenty percent higher than the offered or bid price of foreign-made aluminum, glass or steel products (including any applicable duty): Provided, That if the aluminum, glass or steel
products to be supplied are produced in a "substantial labor surplus area" as determined by the United States department of labor, the offered or bid price of domestic aluminum, glass or steel products is not unreasonable unless it is more than thirty percent higher than the offered or bid price of foreign-made aluminum, glass or steel products (including any applicable duty).

§5-19-3. Contract payments; recovery in cases of violation of article.

A public agency may not authorize or make any payments to a contractor under a contract which contains or should contain the provision required by section two of this article unless such contractor has fully complied with such provision. Prior to such payment, the public agency shall require sworn certificates of compliance from all contractors, subcontractors and suppliers whose work involved the supplying of aluminum, glass or steel products. Payments made by a public agency to any contractor who did not comply with this article may be recovered by such agency.

CHAPTER 92

(S. B. S18—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 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, general and limited partners being respectively designated, and the name and address of the person to whom shall be sent notice or process served upon, or service of
which is accepted by the secretary of state, if such person has been appointed by the limited partnership;

V. The term for which the partnership is to exist;

VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happenings of which they shall be made;

VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned;

IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution;

X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution;

XI. The right, if given, of the partners to admit additional limited partners;

XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;

XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner; and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(b) File for record the certificate in the office of the clerk of the county commission of each county in which such partnership has a place of business and in the office of the secretary of state.

(2) A limited partnership is formed if there has been
substantial compliance in good faith with the requirements 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 attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the secretary of state such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with a fee of two dollars, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service, or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him
less than ten days before the return day thereof. Such
limited partnership shall pay the annual fee prescribed
by article twelve, chapter eleven of this code for the
services of the secretary of state as its attorney-in-fact.

Any foreign limited partnership which shall conduct
affairs or do or transact business in this state without
having been authorized so to do pursuant to the pro-
visions of this article shall be conclusively presumed
to have appointed the secretary of state as its attorney-
in-fact with authority to accept service of notice and
process on behalf of such limited partnership and upon
whom service of notice and process may be made in
this state for and upon every such limited partnership
in any action or proceeding described in the next follow-
ing paragraph of this section. No act of such limited
partnership appointing the secretary of state as such
attorney-in-fact shall be necessary. Immediately after
being served with or accepting any such process or
notice, of which process or notice two copies for each
defendant shall be furnished the secretary of state with
the original notice or process, together with a fee of two
dollars, the secretary of state shall file in his office a
copy of such process or notice, with a note thereon
endorsed of the time of service or acceptance, as the
case may be, and transmit one copy of such process or
notice by registered or certified mail, return receipt re-
quested, to such limited partnership at the address of
its principal office, which address shall be stated in such
process or notice. Such service or acceptance of such
process or notice shall be sufficient if such return receipt
shall be signed by an agent or employee of such limited
partnership, or the registered or certified mail so sent
by the secretary of state is refused by the addressee and
the registered or certified mail is returned to the secre-
tary of state, or to his office, showing thereon the stamp
of the United States postal service that delivery thereof
has been refused, and such return receipt or registered or
certified mail is appended to the original process or
notice and filed therewith in the clerk's office of
the court from which such process or notice was
issued. No process or notice shall be served on the
secretary of state or accepted by him less than ten
days before the return date thereof. The court may order
such continuances as may be reasonable to afford each
defendant opportunity to defend the action or pro-
ceedings.

For the purpose of this section, a foreign limited part-
nership not authorized to conduct affairs or do or transact
business in this state pursuant to the provisions of this
article shall nevertheless be deemed to be conducting
affairs or doing or transacting business herein (a) if
such limited partnership makes a contract to be per-
formed, in whole or in part, by any party thereto, in
this state, (b) if such limited partnership commits a
tort in whole or in part in this state, or (c) if such
limited partnership manufactures, sells, offers for sale
or supplies any product in a defective condition and such
product causes injury to any person or property within
this state notwithstanding the fact that such limited
partnership had no agents, servants or employees or
contacts within this state at the time of said injury. The
making of such contract, the committing of such tort
or the manufacture or sale, offer of sale or supply of
such defective product as hereinabove described shall
be deemed to be the agreement of such limited part-
nership that any notice or process served upon, or accepted
by, the secretary of state pursuant to the next preceding
paragraph of this section in any action or proceeding
against such limited partnership arising from, or growing
out of, such contract, tort, or manufacture or sale, offer
of sale or supply of such defective product shall be of
the same legal force and validity as process duly served
on such 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.

Process against, or notice to, a domestic limited part-
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, con-
struction, reconstruction, improving, upgrading and com-
pletion of state roads and highways and for the replace-
ment 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 spe-
cific projects and amounts thereof awarded; specifying the
powers of and limitations upon the governor in the issu-
ance 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 the Better Highways Amendment of 1973, of the par value not to exceed one hundred million dollars during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-nine or thereafter, are hereby authorized to be issued and sold 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 and such funds shall be designated for the following purposes in the following amounts:

(1) Bridge replacement and improvement program—not to exceed thirty-three million dollars;

(2) Appalachian highway system—not to exceed sixty-two million dollars;

(3) Upgrading state local roads—not to exceed two million dollars;

(4) Construction, reconstruction, improving and upgrading of US Route 52 between Huntington and Bluefield, West Virginia—not to exceed three million dollars.

No later than ten days after the close of each month, the commissioner of the department of highways shall submit to the president of the Senate and the speaker of the House of Delegates of the Legislature of West Virginia a report of the specific projects and amount thereof awarded by the department of highways and for which such bond proceed moneys have been obligated or expended.

Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denomina-
tions, at such time, bearing such date or dates, as the gov-
ernor may determine, based upon an examination of the
West Virginia department of highways' yearly program
which justified the issuance by the governor of said bonds,
and shall become due and payable serially, annually or
semiannually, in such amounts and mature in such years
as the governor may determine: Provided, That such
bonds shall be sold in increments not to exceed fifty mil-
ion dollars: Provided, however, That all bonds authorized
to be issued and sold under this act shall mature within
and not exceeding twenty-five years from their date:
Provided further, That the governor must offer said bonds
for competitive bids from recognized financial investment
institutions before said bonds may be sold.

§2. Transfer fee; registration fee; where payable; interest
rate; tax exempt.

1 The auditor and the treasurer are hereby authorized
to arrange for the transfer of registered bonds and for
each such transfer a fee of one dollar shall be charged
by and paid to the state of West Virginia, to the credit
of the state road fund. Bonds taken in exchange shall be
canceled by the auditor and treasurer and be carefully
preserved by the treasurer. The treasurer shall make
provisions for registering "payable to bearer" bonds, and
for each bond registered a fee of one dollar shall like-
wise be charged by and paid to the state of West Vir-
ginia, to the credit of the state road fund. All such bonds
shall be payable at the office of the treasurer of the state
of West Virginia, or, at the option of the holder, at a
bank in the city of New York to be designated by the
governor, or, at the option of the holder, at such other
bank or banks within the state as may be designated or
approved by the governor. The bonds shall bear interest,
payable semiannually, to bearer, at the office of the
treasurer of the state of West Virginia, at the capitol of
the state, or at the banks designated and approved by the
governor, upon presentation and surrender of interest
coupons then due, in the case of coupon bonds. For the
payment of interest on registered bonds, the treasurer
of the state of West Virginia shall requisition a warrant
from the auditor of the state to be drawn on the
state treasurer, and shall mail such warrant to the
registered owner at the address as shown by the record
of registration. Both the principal and interest of the
bonds shall be payable in lawful money of the United
States of America and the bonds shall be exempt from
taxation by the state of West Virginia, or by any county,
district or municipality thereof, which facts shall appear
on the face of the bonds as part of the contract with the
holder thereof.

§3. Form of bond.

The bonds shall be executed on behalf of the state
of West Virginia, by the manual or facsimile signature
of the treasurer thereof, under the great seal of the state
or a facsimile thereof, and countersigned by the manual
or facsimile signature of the auditor of the state: Provided,
That one of said signatures on said bonds shall be a
manual signature and said bonds shall be in the following
form or to the following effect, as nearly as may be,
namely:

COUPON ROAD BOND
(Or registered road bond, as the case may be)
OF THE
STATE OF WEST VIRGINIA

The state of West Virginia, under and by virtue of
authority of an amendment to the constitution, which
was proposed by Senate Joint Resolution No. 17, adopted
the thirteenth day of April, one thousand nine hundred
seventy-three, and was ratified by a vote of the people
at the special election on the sixth day of November, one
thousand nine hundred seventy-three, which is hereby
made a part hereof as fully as if set forth at length
herein, acknowledges itself to be indebted to and hereby
promises to pay to the bearer hereof (in case of a coupon
bond) or to __________________________ or assigns (the owner
of record, in case of registered bonds) on the __________
date of __________________, 19____, in lawful money of the
United States of America at the office of the treasurer of
the state of West Virginia at the capitol of said state, or, at ___________ bank in the city of New York, or, at ______________ bank, within the state, at the option of the holder, the sum of __________ dollars, with interest thereon at __________ percent a year from the date, payable semiannually in like lawful money of the United States of America at the treasurer's office or banks aforesaid, on the first day of __________, and the first day of __________ of each year (and in the case of coupon bonds) according to the tenor of the annexed coupons bearing the facsimile signature of the treasurer of the state of West Virginia upon surrender of such coupons. This bond (in case of a coupon bond) may be exchanged for a registered bond of like tenor upon application to the treasurer of the state of West Virginia. (Redemption provisions, if any, to be inserted here.)

To secure the payment of the principal and interest of this bond, the state of West Virginia covenants and agrees with the holder as follows: (1) That this bond shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of this bond becoming due and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile signature of the treasurer of the state of West Virginia, and the manual or facsimile countersignature of the auditor of the state, hereto affixed according to law, dated the __________ day of __________, one thousand
nine hundred —— and the seal of the state of West Virginia or a facsimile thereof.

Treasurer of the State of West Virginia.

(SEAL)

Countersigned:

Auditor of the State of West Virginia.

§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No. ________  Coupon No. ________

On the first day of ________________, 19___, the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the treasurer of the state, or, at _______________ bank in the city of New York, or, at _______________ bank within the state, at the option of the holder, the sum of _______________ dollars, the same being semiannual interest on Road Bond No. _________________.

Treasurer of the State of West Virginia.

The signature of the treasurer to such coupon shall be by his facsimile signature and the coupons shall be numbered in the order of their maturity, from number one consecutively. The bonds and coupons may be signed, as provided in this act, by the present treasurer and auditor, or by any of their respective successors in office, and the bonds signed by the persons now in the office may be sold by the governor or his successor in office without being signed by the successor in office of the present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this act
§6. State road fund sources used to pay bonds and interest; investment of remainder.

Into the state road fund there shall be paid all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein provided, and from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all moneys belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state first to the payment of the semiannual interest on such bonds as it shall become due as herein provided. The remainder of the fund shall be invested by the state treasurer in obligations of the government of the United States of America, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That bonds or other obligations so purchased by the state treasurer shall mature so as to provide sufficient money to pay all bonds herein provided to be issued as they become due; and the money so paid into the state road fund under the provisions of this act shall be expended for the purpose of paying the interest and principal of the bonds hereby provided for as they severally become due and payable.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the holders of the bonds issued pursuant hereto as fol-
lows: (1) That such bonds shall constitute a direct and
general obligation of the state of West Virginia; (2) that
the full faith and credit of the state is hereby pledged to
secure the payment of the principal and interest of such
bonds; (3) that an annual state tax shall be collected in
an amount sufficient to pay as it may accrue the interest
on such bonds and the principal thereof; and (4) that
such tax shall be levied in any year only to the extent
that the moneys in the state road fund irrevocably set
aside and appropriated for and applied to the payment of
the interest on and principal of said bonds becoming due
and payable in such year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at
such time or times as he may determine necessary to
provide funds for the building, construction, reconstruc-
tion, improving, upgrading and completion of state roads
and highways, and for bridge replacement and improve-
ment, as herein provided, upon the recommendation of
the West Virginia commissioner of highways, and after
reviewing the program of the West Virginia department
of highways and subject to the limitations contained in
this bill. All sales shall be at not less than par and accrued
interest. All interest coupons becoming payable prior to
the sale date shall be canceled by the treasurer and ren-
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.

The proceeds of all sales of bonds herein authorized
shall be paid into a separate and distinct account in the
state road fund and shall be used and appropriated solely
for the building, construction, reconstruction, improving,
upgrading and completion of state roads and highways
and for bridge replacement and improvement as pro-
vided for by the state constitution and the laws enacted
thereunder.

Except for such sums necessary for current operating
balances, such account shall be invested by the state
treasurer in obligations of the government of the United States, bonds of the state of West Virginia, or any political subdivision thereof: Provided, That no such investment may adversely affect the current operating balances of such funds: Provided, however, That all interest accruing from such investment shall be paid into the state road fund for debt service on the bonds issued.

On or before the thirty-first day of January of each year, the commissioner of the department of highways shall submit to the legislative auditor an accountability status report of all moneys received or expended within the state road fund, herein provided and any other information required to fully account in respect to the handling of bonds issued and moneys expended under the authority of the Better Highways Amendment of 1973. No moneys shall be expended by the commissioner other than as authorized in said amendment.

§10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the bonds authorized by this bill are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this bill.

§12. Interim certificates.

The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this bill just as fully and completely as the permanent bonds.

§13. State treasurer to be financial advisor.

The state treasurer shall serve as financial advisor to the governor for the issuance and sale of such bonds.
§14. Attorney general or his duly appointed legal representa-
tive to serve as bond counsel.
1 The attorney general, or his duly appointed legal repre-
sentative, shall serve as bond counsel and shall be
2 responsible for the issuance of a final approving opinion
3 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-
modities now owned or in the future acquired by the state, when, in the opinion of the director, any such commodities are or shall become obsolete, unusable or are not being used, or should be replaced.

It shall be the duty of the director to determine what commodities or expendable commodities should be disposed of and he shall make such disposition in the manner which in his opinion will be most advantageous to the state, either by transferring the particular commodities or expendable commodities between departments, by selling such commodities to county commissions, county boards of education or municipalities, by trading in such commodities as a part payment on the purchase of new commodities, or by sale thereof to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of such sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the sale is to be conducted. The sale may also be advertised in such other advertising media as the director may deem advisable. The director shall have the authority to sell to the highest bidder or to any one or more of the highest bidders, if there be more than one, or, if in his opinion the best interest of the state will be served, to reject all bids.

Upon the transfer of commodities or expendable commodities between departments, or upon the sale thereof to a county commission, county board of education or municipality, the director shall set the price to be paid by the receiving department, county commission, county board of education or municipality, with due consideration given to current market prices.

The director is also hereby authorized to sell expendable, obsolete or unused motor vehicles owned by the State to county commissions, county boards of education or municipalities. The director, with due consideration given to current market prices, shall set the price to be paid by the receiving county commission, county board of education or municipality, for motor vehicles sold pursuant to this provision: Provided,
That in no event shall the sale price of any motor vehicle sold to a county commission, county board of education or municipality be less than the "average loan" value, as published in the most recent available eastern edition of the National Automotive Dealer's Association (N.A.D.A.) Official Used Car Guide, if such a value be available. If no such value be available, the director shall set the price to be paid by the receiving county commission, county board of education or municipality with due consideration given to current market prices.

The director shall report to the legislative auditor, semi-annually, all sales of commodities or expendable commodities made during the preceding six months to county commissions, county boards of education and municipalities. The report shall include a description of the commodities sold, the price paid by the commission, board or governing body which received the commodities; and the report shall show to whom each commodity was sold.

The proceeds of such sales or transfers shall be deposited in the state treasury to the credit on a pro rata basis of the fund or funds out of which the purchase of the particular commodities or expendable commodities was made: Provided, That the director may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property disposed of or sold pursuant to the provisions of this section.

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**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-b, 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-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 twenty-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 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; 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 twenty-five; that sections 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.
12A. Annual Tax on Incomes of Certain Carriers.
14A. Motor Carrier Road Tax.
15. Consumers Sales Tax.
15A. Use 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.
§11-10-5. General provisions; regulations and forms; investigations; subpoena and subpoena duces tecum; returns 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 paying; time of performance of acts where last day falls on Saturday, Sunday, or legal holiday; enforcement of article.
§11-10-6. Mathematical errors; collection of balance due on return without a remittance.
§11-10-1. Legislative findings.

1 The Legislature hereby finds and declares that the adoption by this state of certain uniform procedures for the assessment and collection of the taxes administered by the tax commissioner to which this article applies will (1) simplify the administration and collection of taxes, and (2) promote efficiency and uniformity of application in the administration of the tax laws. The Legislature does therefore declare that this article ten 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 Procedure and Administration Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter or headings relating to any part, section, subsection or paragraph of this article.

§11-10-3. Application of this article.

1 The provisions of this article shall apply to the inheritance and transfer taxes and interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation
tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuel excise tax, the motor carrier road tax, and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax 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 individual, firm, partnership, limited partnership, copartnership, joint adventure, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer, employee or member of any of the foregoing who, as such officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article and the provisions of any of the other articles of this chapter which impose taxes administered by the tax commissioner, unless the intention to give a more limited or broader meaning is disclosed by the context of this article or any of the other articles of this chapter which impose taxes administered by the tax commissioner.

3 (b) "State" means any state of the United States or the District of Columbia.

4 (c) "Tax" or "taxes" includes within the meaning thereof taxes specified in section three of this article, additions to tax, penalties and interest, unless the intention to give the same a more limited meaning is disclosed by the context.

5 (d) "Tax commissioner" or "commissioner" means the tax commissioner of the state of West Virginia or his delegate.

6 (e) "Taxpayer" means any person required to file a 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
tax to which this article applies as set forth in section
32 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; investiga-
gations; subpoena and subpoena duces tecum; returns 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 paying; time of performance of acts where last day
falls on Saturday, Sunday, or legal holiday; enforcement 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
date of this article shall remain in full force and effect
10 until amended or repealed by the tax commissioner in
11 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,
memoranda, inventory or equipment bearing upon the matters required to be included in the tax return, may make test checks of tax yield, and may require the attendance of the person rendering the tax return or the attendance of any other person having knowledge of the matters contained therein and may take testimony and may require material proof with power to administer oath to such person or persons.

(c) Subpoena and subpoena duces tecum.—For the efficient administration of the powers vested in the tax commissioner by subsection (b), the tax commissioner shall have the power to issue subpoenas and subpoenas duces tecum, in the name of his agency, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified. Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof by personal service made by any person over eighteen years of age. Service of subpoenas and subpoenas duces tecum shall be the responsibility of the tax commissioner or his delegate. Any person, except a person in the employ of the state tax department, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state. Upon motion made promptly, and in any event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under the “West Virginia Rules of Civil Procedure for Trial Courts of Record,” could grant, and for any of the same reasons, with respect to any such subpoena or subpoena duces tecum issued from any such circuit court.
In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of Kanawha County or of the county in which such person resides, has his or its principal place of business or is employed, or the judge thereof in vacation, upon application by the tax commissioner, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein. Witnesses subpoenaed under this subsection shall testify under oath or affirmation.

(d) Returns by tax commissioner.—If any taxpayer fails to file a return at the time required by law or by regulation made under authority of law, the tax commissioner may proceed to make a return from any information available.

(e) Secrecy of returns.—Except when required in an official investigation into the amount of tax due under any article administered under this article or in any proceeding before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (f), (g) and (h), it shall be unlawful for any officer or employee of this state to divulge or make known in any manner the tax return, or any part thereof of any individual, firm or corporation, or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing any tax administered under this article or by any rule or regulation of the tax commissioner issued thereunder.

Any officer or employee of this state who violates this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than
one thousand dollars or imprisoned for not more than
one year, or both, together with costs of prosecu-
tion.

Any person protected by the provisions of this article
may, in writing, waive the secrecy provisions of this
subsection for such purpose and such period as he shall
therein state, and the commissioner, if he so determines,
may thereupon release to designated recipients such
taxpayer's return or other particulars filed under the
provisions of the tax articles administered under the
provisions of this article.

This subsection shall not be construed to prohibit the
publication or release of statistics so classified as to pre-
vent the identification of particular reports and the
items thereof.

(f) Reciprocal exchange.—The tax commissioner may
permit the proper officer of the United States, or the
District of Columbia, or any other state, or any political
subdivision of this state, or his authorized representa-
tive, to inspect reports, declarations or returns filed
with the tax commissioner or may furnish to such officer
or representative a copy of any such document provided
such other jurisdiction grants substantially similar priv-
ileges to the tax commissioner or to the attorney
general of this state.

(g) Inspection of business and occupation tax returns
by municipalities.—The tax commissioner shall, upon the
written request of the mayor of any West Virginia
municipality having a business and occupation tax or
privilege tax, allow the duly authorized agent of such
municipality to inspect and make copies of the state
business and occupation tax return filed by taxpayers
of such municipality, for the purpose of securing in-
formation for municipal tax purposes provided such
municipality allows the tax commissioner the right to
inspect or make copies of the municipal business and
occupation tax returns of such municipality.

(h) Release of administrative decisions.—The tax
commissioner may, in his discretion, release his admin-
Provided, That, unless waived in writing by the taxpayer, any identifying characteristics or facts about the taxpayer shall be omitted or modified to such an extent so as to not disclose the name or identity of the taxpayer.

(i) Service of notice.—Notices of assessments and administrative decisions shall be served upon the taxpayer either by personal service or by certified mail.

(j) Timely filing and paying.

(1) Delivery in person.—If any return, claim, statement or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the tax commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax department, it shall be timely filed.

(2) Timely mailing.—If any return, claim, statement or other document, required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of the provisions of any article of this chapter imposing any tax administered under this article, is, after such period or such date, delivered by United States mail to the tax commissioner or the state tax department, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document or payment is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be, provided the following mailing requirements are met:

(A) The postmark date falls within the prescribed period or on or before the prescribed date for filing (including any extension granted for such filing) of the return, claim, statement or other document, or for
making the payment (including any extension granted for such payment), and

(B) The return, claim, statement, other document or payment was, within the time prescribed in sub(paragraph (A), deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the tax commissioner or the state tax department.

(3) Postmarks.—This subsection shall apply in the case of postmarks not made by the United States post office only if and to the extent provided by rules or regulations prescribed by the tax commissioner.

(4) Registered and certified mailing.—For purposes of this subsection, if any return, claim, statement, or other document or payment is sent by United States registered or certified mail, the date of registration or certification shall be deemed the postmark date.

(5) Last date for filing or payment.—The last date for timely filing or timely making payment shall include any extension of time authorized by law or regulation and any extension of time granted in writing by the tax commissioner.

(k) *Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.*—When the last day prescribed under authority of any article of this chapter imposing any tax administered under this article for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this subsection, the last day for the performance of any act shall be determined by including any authorized extension of time; and the term "legal holiday" means a legal holiday in this state.

(l) *Enforcement.*—The enforcement of any of the provisions of this article or the provisions of any article of this chapter administered under this article, in any
of the courts of this state shall be under the exclusive jurisdiction of the tax commissioner, who shall require the assistance of and act through the prosecuting attorney of any county where suit is brought. Such prosecuting attorney shall receive no fees or compensation in addition to the salary paid by the county to such offices, for services rendered in enforcing this article or any of the other articles of this chapter administered under this article.

§11-10-6. Mathematical errors; collection of balance due on return without a remittance.

(a) Mathematical error.—When it appears to the tax commissioner that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), the tax commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency in tax. The taxpayer shall have fifteen days after receipt of such notice within which to pay such deficiency. If the taxpayer fails to pay such deficiency within fifteen days, the tax commissioner shall make an assessment of such deficiency in accordance with section seven and shall give the taxpayer written notice thereof.

(b) Collection of balance due.—If a taxpayer files a mathematically correct return which reflects a balance due of any tax administered under this article, and if full payment thereof has not been made, the tax commissioner shall notify the taxpayer, in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have fifteen days after receipt of such notice within which to make payment. If the taxpayer fails to make payment within such fifteen-day period, the tax commissioner shall proceed under section eleven of this article to collect the amount due.

§11-10-7. Assessment.

(a) General.—If the tax commissioner believes that any tax administered under this article has been insufficiently returned by a taxpayer, either because the


taxpayer has failed to properly remit the tax, or has
failed to make a return, or has made a return which is
incomplete, deficient or otherwise erroneous, he may
proceed to investigate and determine or estimate the tax
liability and make an assessment therefor.

(b) 

(b) Jeopardy assessments.—If the tax commissioner
believes that the collection of any tax administered under
this article will be jeopardized by delay, he shall there-
upon make an assessment of tax, noting that fact upon
the assessment. The amount assessed shall immediately
be due and payable. Unless the taxpayer against whom
a jeopardy assessment is made petitions for reassessment
within twenty days after service of notice of the jeopardy
assessment, such assessment shall become final: Pro-
vided, That upon written request of the taxpayer made
within such twenty-day period, showing reasonable
cause therefor, the tax commissioner may grant an
extension of time not to exceed thirty additional days
within which such petition may be filed. If a taxpayer
against whom a jeopardy assessment has been made
petitions for reassessment or requests an extension of
time to file a petition for reassessment, the petition or
request shall be accompanied by such security as the
tax commissioner may deem necessary to insure com-
pliance with the applicable provisions of this chapter. If
such petition for reassessment is filed, accompanied by the
necessary security, the provisions for hearing, determina-
tion and appeal set forth in sections nine and ten shall
then be applicable.

(c) Abatement or amendment of assessment.—The tax
commissioner may abate or amend, in whole or in part,
any assessment whenever he ascertains that such assess-
ment is improper or incomplete in any material re-
spect.


The tax commissioner shall give the taxpayer written
notice of any assessment or amended assessment made
pursuant to this article. Unless the taxpayer to whom a
notice of assessment, or amended assessment, is given shall, within sixty days after service thereof (except in the case of jeopardy assessments, as to which the time for filing a petition is specified in section seven), either personally or by certified mail, file with the tax commis-

sioner a petition in writing, verified under oath by the taxpayer or his duly authorized agent, having knowl-
edge of the facts, setting forth with particularity the items of the assessment objected to, together with the reasons for the objections, the assessment or amended assessment shall become final and not subject to either administrative or judicial review under the provisions of sections nine and ten of this article. The amount of an assessment or amended assessment shall be due and payable on the day following the date upon which the assessment or amended assessment becomes final.


When a petition for reassessment provided for in section eight of this article, or a petition for refund or credit provided for in section fourteen of this article, is filed within the time prescribed by said sections for such filing, or a hearing is requested pursuant to the provisions of any other article of this chapter which is administered under this article, the tax commissioner shall assign a time and place for a hearing upon the same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof. Such hearing shall be held within ninety days from the date of filing the petition or other written request for hearing unless continued by agreement of the parties or by the tax commissioner for good cause.

The hearing shall be informal and shall be conducted in an impartial manner by the tax commissioner or a hearing examiner designated by him. If the hearing is on a petition for reassessment the burden of proof shall be upon the taxpayer to show the assessment is incorrect and contrary to law, either in whole or in part. If the hearing is on a petition for refund or credit, the petitioner shall also have the burden of proof.
After any hearing as above provided for; the tax commissioner shall, within a reasonable time, give notice in writing of his decision. Unless an appeal from the decision of the tax commissioner rendered in any such hearing is taken, pursuant to the provisions of section ten of this article, within sixty days after service of such notice, the tax commissioner’s decision shall become final and conclusive and not subject to either administrative or judicial review. The amount, if any, due the state under such decision shall be due and payable on the day following the date upon which such decision becomes final. The amount, if any, due the taxpayer under such decision shall be promptly refunded, or the same may be credited pursuant to section fourteen of this article.

§11-10-10. Appeals.

1. (a) Right of appeal.—A taxpayer may appeal the administrative decision of the tax commissioner issued under section nine or fourteen of this article, by taking an appeal to the circuit courts of this state within sixty days after being served with notice of the administrative decision.

2. (b) Venue.—The appeal may be taken in the circuit court of any county:
   
3. (1) wherein the activity taxed was engaged in; or
4. (2) wherein the taxpayer resides; or
5. (3) wherein the will of the decedent was probated or letters of administration granted; or
6. (4) to the circuit court of Kanawha County.

7. (c) Petition for appeal.—The appeal proceeding shall be instituted by filing a petition with the circuit court, or the judge thereof in vacation, within the sixty-day period prescribed in subsection (a). The clerk of the circuit court shall, within ten days after date the petition is filed, serve the tax commissioner with a copy of the same by registered or certified mail. This petition shall be in writing, verified under oath by the taxpayer, or his
duly authorized agent, having knowledge of the facts, set forth with particularity the items of the administrative decision or the assessment objected to, together with the reasons for such objections.

(d) Appeal bond.—Before the appeal is heard, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the tax commissioner. Notwithstanding the foregoing and in lieu of such bond, the tax commissioner may, upon a sufficient showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer subject to the lien imposed by section twelve of this article, or other indemnification, are adequate to secure performance of the orders of the court.

(e) Appeal.—The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner's notice of assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of those articles of this chapter to which this article is applicable. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of the court with the tax commissioner who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.


(a) General.—The tax commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter
to which this article is applicable. In addition to all
other remedies available for the collection of debts due
this state, the tax commissioner may proceed by fore-
closure of the lien provided in section twelve, or by
distraint and sale under section thirteen.

(b) Prerequisite to final settlement of contracts with
nonresident contractor; user personally liable.—

(1) Any person contracting with a nonresident con-
tractor subject to the taxes imposed by articles thirteen,
twenty-one and twenty-four of this chapter, shall with-
hold payment, in the final settlement of such contract, of
such sufficient amount, not exceeding six percent of the
contract price, as will in such person's opinion be suffi-
cient to cover such taxes, until the receipt of a certificate
from the tax commissioner to the effect that the above
referenced taxes imposed against the nonresident con-
tractor have been paid or provided for.

(2) If any person shall fail to withhold as provided
herein, such person shall be personally liable for the
payment of all such taxes attributable to the contract,
not to exceed six percent of the contract price. The same
shall be recoverable by the tax commissioner by appro-
priate legal proceedings.

(c) Prerequisite for issuance of certificate of dissolu-
tion or withdrawal of corporation.—The secretary of state
shall withhold the issuance of any certificate of dissolu-
tion or withdrawal in the case of any corporation orga-
nized under the laws of this state, or organized under
the laws of another state and admitted to do business in
this state, until the receipt of a certificate from the tax
commissioner to the effect that every tax administered
under this article imposed against any such corporation
has been paid or provided for, or that the applicant is
not liable for any tax administered under this article.

(d) Prerequisite to final settlement of contract with
this state or political subdivision; penalty.—All state,
county, district and municipal officers and agents making
contracts on behalf of this state or any political sub-
division thereof shall withhold payment, in the final settlement of any such contract, until the receipt of a certificate from the tax commissioner to the effect that the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the contractor have been paid or provided for. If the transaction embodied in such contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then such payment shall also be withheld until receipt of a release from such county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section shall be subject to a civil penalty of one thousand dollars, recoverable as a debt in a civil action brought by the tax commissioner.

(e) Limited effect of tax commissioner's certificates.— The certificates of the tax commissioner provided for in subsections (b), (c) and (d) of this section shall not bar subsequent investigations, assessments, refunds and credits with respect to the taxpayer.

(f) Payment when person sells out or quits business; lien.—

(1) If any person subject to any tax administered under this article sells out his or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall become due and payable immediately and such person shall, within thirty days after selling out his or its business or stock of goods or ceasing to do business, make a final return or returns and pay any tax or taxes which may be due. The unpaid amount of any such tax shall be a lien upon the property of such person.

(2) The successor in business of any such person shall withhold so much of the purchase money as will satisfy any tax, additions to tax, penalties and interest which may be due until the former owner shall produce
a receipt from the tax commissioner evidencing the pay-
ment thereof. If the purchaser of a business or stock of
goods shall fail to withhold purchase money as provided
above, and if any such tax, additions to tax, penalties
and interest remain unpaid after expiration of the thirty-
day period allowed for payment thereof, the purchaser
shall be personally liable for the payment of any such
tax, additions to tax, penalties and interest and the same
shall be recoverable by the tax commissioner by action
as provided by this section.

(g) Injunction.—If the taxpayer fails for a period of
more than sixty days to fully comply with any of the
provisions of this article or of any other article of this
chapter to which this article is applicable, the tax com-
missioner may institute a proceeding to secure an in-
junction to restrain the taxpayer from doing business in
this state until the taxpayer fully complies with the
provisions of this article or any of such other articles.

(h) Costs.—In any proceeding under this section, upon
judgment or decree for the tax commissioner, he shall
be awarded his costs.

§11-10-12. Liens.

1 (a) General.—Any tax, additions to tax, penalties
or interest due and payable under this article or any
of the other articles of this chapter to which this article
is applicable shall be a debt due this state. It shall
be a personal obligation of the taxpayer and shall be
a lien upon the real and personal property of the tax-

payer.

(b) Duration of lien.—The lien created by this sec-
tion shall continue until the liability for the tax, addi-
tions to tax, penalties and interest is satisfied or be-
comes unenforceable by reason of lapse of time.

(c) Recordation.—The lien created by this section
shall be subject to the restrictions and conditions em-
bodyed in article ten-c, chapter thirty-eight of this code
and any amendment made or which may hereafter be
made thereto.
(d) Release.—The tax commissioner, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien.


If any tax administered under this article is required to be paid at the time a return is filed and if any portion of such tax is not so paid, or if an assessment of tax is made by the tax commissioner and notice thereof is given as required by this article and such assessment has become final and is not subject to administrative or judicial review, the tax commissioner may issue a warrant directed to the sheriff of any county of this state commanding him to levy upon and sell the real and personal property, including intangibles represented by negotiable evidences of indebtedness, of the taxpayer owning the same found within his county for the payment of the amount of all taxes, additions to tax, penalties and interest accrued and unpaid under any of the articles of this chapter to which this article is applicable. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all additions to tax collected over and above the principal amount of tax, penalties and interest due, but in no case shall such compensation exceed one hundred dollars. The sheriff shall return such warrant to the tax commissioner and pay to him the money collected by virtue thereof by the time specified in the warrant, but not later than sixty days from the date of such warrant. In the discretion of the tax commissioner, a warrant of like terms, force and effect may be issued
and directed to any officer or employee of the state tax department and in the execution thereof such officer or employee shall have all powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of all reasonable and necessary expenses actually paid in the performance of such duty. If a warrant is returned not satisfied in full, the tax commissioner may proceed to enforce the claim for taxes by civil action.

§11-10-14. Overpayments; credits; refunds; and limitations.

(a) Refunds or credits of overpayments.—In the case of overpayment of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, the tax commissioner shall, subject to the provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for such tax for other periods. The refund or credit shall include any interest due the taxpayer under the provisions of section seventeen of this article.

(b) Refunds or credit of gasoline and special fuel excise tax or motor carrier road tax.—Any person who seeks a refund or credit of gasoline and special fuel excise tax under the provisions of sections ten, eleven or twelve of article fourteen or the provisions of section nine or eleven of article fourteen-a of this chapter shall file his claim for refund or credit in accordance with the provisions of such sections. The ninety-day time period for determination of these claims provided in subsection (d) shall not apply to such claims for refund or credit.

(c) Claims for refund or credit.—No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the tax commissioner. A person against whom an assessment or an administrative decision has become final shall not be entitled to file a claim for refund or credit with the tax com-
missioner as prescribed herein. The tax commissioner shall determine the taxpayer's claim and notify the taxpayer in writing of his determination.

(d) Petition for refund or credit; hearing.—If the taxpayer is not satisfied with the tax commissioner's determination of his claim for refund or credit, or if the tax commissioner has not determined the taxpayer's claim within ninety days after such claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by articles twenty-one and twenty-four of this chapter, after the filing thereof, the taxpayer may file with the tax commissioner, either personally or by certified mail, a petition for refund or credit: Provided, That no petition for refund or credit may be filed more than sixty days after the taxpayer is served with notice of denial of his claim. The petition for refund or credit shall be in writing, verified under oath by the said taxpayer or his duly authorized agent having knowledge of the facts, and shall set forth with particularity the items of the determination objected to, together with the reasons for the objections. When a petition for refund or credit is properly filed, the procedures for hearing and for decision prescribed in section nine shall be followed.

(e) Appeal.—An appeal from the tax commissioner's decision upon the petition for refund or credit may be taken by the taxpayer in the same manner and under the same procedure as that set forth in section eleven relating to an appeal from the tax commissioner's decision on a petition for reassessment, but no bond shall be required of the taxpayer.

(f) Decision of the court.—Where the appeal is to review an administrative decision on a petition for refund or credit, the court may determine the legal rights of the parties but in no event shall it enter a judgment for money.

(g) Refund made or credit established.—The tax commissioner shall promptly issue his requisition on the treasury or establish a credit, as requested by the
taxpayer, for any amount finally administratively or judicially determined to be an overpayment of any tax administered under this article. The auditor shall issue his warrant on the treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the treasurer shall pay such warrant out of the fund into which the amount so refunded was originally paid.

(h) Forms for claim for refund or a credit; where return shall constitute claim.—The tax commissioner may prescribe by rule or regulation the forms for claims for refund or credit. Notwithstanding the foregoing, where the taxpayer has overpaid the tax imposed by article twenty-one or article twenty-four of this chapter, a return signed by the taxpayer which shows on its face that an overpayment of such tax has been made shall constitute a claim for refund or a credit.

(i) Remedy exclusive.—The procedure provided by this section shall constitute the sole method of obtaining any refund or any credit, it being the intent hereof that the procedure set forth in this article shall be in lieu of any other remedy, including the uniform declaratory judgments act embodied in article thirteen chapter fifty-five of this code and the provisions of section two-a, article one of this chapter.

(j) Applicability of this section.—The provisions of this section shall apply to refunds or credits of any tax, additions to tax, penalties or interest imposed by any article of this chapter to which this article is applicable, for any refund or credit sought after the first day of July, one thousand nine hundred seventy-eight, irrespective of whether the claim of refund or credit is for a tax period ending prior to that date.

(k) Erroneous refund or credit.—If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he may proceed to investigate and may make an assessment or institute civil action to recover the amount of such refund or credit.
(1) Limitation on claims for refund or credit.—

(1) General rule.—Whenever a taxpayer claims to be entitled to a refund or credit of any tax, additions to tax, penalties or interest paid into the treasury of this state, such taxpayer shall, except as provided in subsection (d), file his claim within three years after the due date of the return in respect of which the tax was imposed or within two years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within two years from the time the tax was paid, and not thereafter.

(2) Extension of time for filing claim by agreement.—The tax commissioner and the taxpayer may enter into written agreement to extend the period within which the taxpayer may file a claim for refund or credit, which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) Special rule where agreement to extend time for making an assessment.—Notwithstanding subdivisions (1) and (2) of this subsection, if an agreement is made under the provisions of section fifteen of this article extending the time period in which an assessment of a tax can be made, then the time period for filing a claim for refund or credit for an overpayment of the same tax made during the periods subject to assessment under the extension agreement shall also be extended for the period of the extension agreement plus ninety days.

(4) Overpayment of federal tax.—Notwithstanding subdivisions (1) and (2) of this subsection, in the event of a final determination by the United States internal revenue service or other competent authority of an overpayment in the taxpayer's federal income tax liability, the period of limitation upon claiming a refund reflecting such final determination in taxes imposed by articles twelve-a, twenty-one and twenty-four of this chapter shall not expire until six months after such determination.
146 is made by the United States internal revenue service or other competent authority.

148 (5) Deficiencies in business and occupation or carrier income taxes.—Notwithstanding subdivisions (1) and (2) of this subsection, in the event of a final administrative or judicial determination of a deficiency in the taxpayer's liability for taxes imposed by articles twelve-a and thirteen of this chapter, the period of limitation upon claiming a refund reflecting such final determination in the taxes imposed by articles twenty-one and twenty-four of this chapter shall not expire until six months after such final determination is made.

158 (6) Exception for gasoline and special fuel excise tax and motor carrier road tax.—This subsection (k) shall not apply to refunds of gasoline and special fuel excise tax or motor carrier road tax sought under the provisions of article fourteen or article fourteen-a of this chapter.

164 (7) Transition rules.—The general rule prescribed in subdivision (1) of this subsection shall be subject to the following transition rules:

167 (A) For tax periods ending prior to July 1, 1967.—With respect to any tax imposed for any period ending prior to the first day of July, one thousand nine hundred sixty-seven, the taxpayer must file his claim within three years from the date of payment and not thereafter.

172 (B) For tax periods ending on or after July 1, 1967, but prior to January 1, 1979.—With respect to any tax imposed for any period ending after the first day of July, one thousand nine hundred sixty-seven, but prior to the first day of January, one thousand nine hundred seventy-nine, the taxpayer must file his claim within five years from the date of payment and not thereafter.

179 (C) For tax periods ending after December 31, 1978, but prior to January 1, 1980.—With respect to any tax imposed for any period ending after the thirty-first day of December, one thousand nine hundred seventy-eight, but prior to the first day of January, one thousand nine
hundred eighty, the taxpayer must file his claim within four years from the date of payment and not thereafter.

§11-10-15. Limitations on assessment.

(a) General rule.—The amount of any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the due date of the returns: Provided, That in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return is filed, the assessment may be made at any time.

(b) Extension by agreement.—The tax commissioner and the taxpayer may enter into written agreements to extend the period within which the tax commissioner may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Deficiency in federal tax.—Notwithstanding subsection (a), in the event of a final determination by the United States internal revenue service or other competent authority of a deficiency in the taxpayer's federal income tax liability, the period of limitation upon assessment of a deficiency reflecting such final determination in the net income tax imposed by article twelve-a and the taxes imposed by articles twenty-one and twenty-four of this chapter, shall not expire until ninety days after the tax commissioner is advised of the determination by the taxpayer as provided in section six-a of said article twelve-a, section fifty-nine of said article twenty-one and section twenty of said article twenty-four, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later.

(d) Transition rules.—The general rule prescribed in subsection (a) of this section shall be subject to the following transition rules:
(1) For tax periods ending prior to January 1, 1979.—With respect to any tax period ending prior to the first day of January, one thousand nine hundred seventy-nine, the amount of tax, additions to tax, penalties and interest shall be assessed within five years after the due date of the return or the date the return was filed, whichever expires the later, except as provided for a false or fraudulent return.

(2) For tax periods ending after December 31, 1978, but prior to January 1, 1980.—With respect to any tax imposed for any period ending after the thirty-first day of December, one thousand nine hundred seventy-eight, but prior to the first day of January, one thousand nine hundred eighty, the amounts of tax, additions to tax, penalties and interest shall be assessed within four years after the due date of the return or the date the return was filed, whichever expires the later, except as provided for a false or fraudulent return.

§11-10-16. Limitations on collection.

(a) Where assessment is issued.—Every proceeding instituted by the tax commissioner for the collection of the amount found to be due under an assessment which has become final of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether such proceeding shall be instituted in a court or by utilization of other methods provided by law for the collection of such tax, additions to tax, penalty or interest, shall be brought or commenced within five years after the date on which such assessment has become final.

(b) Where assessment is not issued.—Every proceeding instituted by the tax commissioner for the collection of the amount determined to be due by methods provided by law other than the issuance of an assessment, of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable, irrespective of whether such proceeding shall be instituted in a court or by utili-
zation of other methods provided by law for the collection of such tax, additions to tax, penalties or interest, shall be brought or commenced within five years after the date on which the taxpayer filed the annual return required to be filed by any of the articles of this chapter and, if no annual return is required, such five-year period shall begin on the day after the latest periodical return required to be filed in any year is filed.

(c) Exception as to false or fraudulent return or no return.—In the case of the filing of a false or fraudulent return, or in case no return is filed, the limitations specified in this section shall not apply.

(d) Exception as to inheritance tax liens.—This section shall not apply to, or in any manner affect, the inheritance tax liens created by sections nine and eighteen, article eleven of this chapter.

(e) Extension of time for institutions of collection proceedings by agreement.—The tax commissioner and the taxpayer may enter into written agreement to extend the period within which the tax commissioner may institute proceedings for the collection of the amount found to be due under an assessment which has become final, or the amount determined to be due by methods provided by law other than the issuance of the assessment, of any tax, additions to tax, penalties or interest imposed by this article or any of the other articles of this chapter to which this article is applicable. Such period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§11-10-17. Interest.

(a) Underpayments.—If any amount of a tax administered under this article is not paid on or before the last date prescribed for payment, interest on such amount at the rate of eight percent per annum shall be paid for the period from such last date to the date paid. For purposes of this subsection, the last date prescribed for
payment shall be the due date of the return and shall
be determined without regard to any extension of time
for payment.

(b) **Underpayment of estimated business and occupa-
tion tax.**—In the case of an underpayment of estimated
tax by a person who is taxable under the provisions of
article thirteen of this chapter, there shall be added to
the amount of tax due under section four of said article
thirteen, from the date such tax should have been paid,
interest in the amount of eight percent per annum. An
underpayment of estimated tax means the application of
rates set forth in this article against estimated values or
gross income which constitutes less than eighty percent
of actual receipts.

(c) **Erroneous refund or credit.**—If any refund is
made or credit is established upon an erroneous claim for
refund or credit, interest on such amount refunded or
credited at the rate of eight percent per annum shall be
paid by the claimant from the date the refund was made
or the credit was taken to the date such amount is re-
covered.

(d) **Overpayments.**—Interest shall be allowed and
paid at the rate of eight percent per annum upon any
amount which has been finally administratively or judi-
cially determined to be an overpayment in respect of
each tax administered under this article except the taxes
imposed by articles twelve, fourteen and fourteen-a of
this chapter. Such interest shall be allowed and paid
for the period commencing with the date of the filing by
taxpayer of a claim for refund or credit with the tax
commissioner and ending with the date of final adminis-
trative or judicial determination of overpayment. The
tax commissioner shall, within thirty days after such
final determination of entitlement to refund, issue his
requisition or establish a credit as requested by the
taxpayer. Whenever the tax commissioner fails or re-
fuses to issue any such requisition or establish such credit
within said thirty-day period, the interest provided
herein shall commence to accrue anew until performance
by the tax commissioner. The acceptance of such refund
check or credit shall be without prejudice to any right
of the taxpayer to claim any additional overpayment
and interest thereon.

(e) Applicable rules.—

(1) No interest payable on tax refunded or credited
within ninety days after claim for refund or credit is
filed.—In the event of any overpayment of any tax ad-
ministered under this article, except the taxes imposed
by articles twenty-one and twenty-four of this chapter,
where the tax commissioner issues his requisition or
establishes a credit as requested by the taxpayer within
ninety days after the date of the filing by the taxpayer
of a claim for refund or credit, no interest shall be
allowed under this section.

(2) No interest payable where personal income tax
and corporation net income tax refunded or credited
within six months after claim for refund or credit is
filed.—In the event of any overpayment of the taxes
imposed by articles twenty-one and twenty-four of this
chapter, where the tax commissioner issues his requisi-
tion or establishes a credit as requested by the taxpayer
within six months after the date of the filing by the
taxpayer of a claim for refund or credit, no interest shall
be allowed under this section.

(3) Interest treated as tax.—Interest prescribed under
this section on any tax shall be collected and paid in
the same manner as taxes.

(4) No interest on interest.—No interest under this
section shall be imposed on the interest provided by this
section.

(5) Interest on penalties or additions to tax.—Interest
shall be imposed under subsection (a) on any assessable
penalty or additions to tax only if such penalty or addi-
tions to tax is not paid within fifteen days from the date
of notice and demand therefor, and in such case interest
shall be imposed only for the period from the date of
the notice and demand to the date of payment.
(6) Payments made within fifteen days after notice and demand.—If notice and demand is made for payment of any amount, and if such amount is paid within fifteen days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

§11-10-18. Additions to tax.

(a) **Failure to file return or pay tax due.**

(1) In the case of failure to make or file a required return of any tax administered under this article, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax if the failure is for more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided,* That this addition to tax shall be imposed only on the net amount of tax due;

(2) In the case of failure to pay the amount shown as tax on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: *Provided, however,* That the addition to tax shall be imposed only on the net amount of tax due;

(b) **Limitation and special rule.**—In computing additions to tax under this section, only one of the paragraphs of subsection (a) shall be applicable to any one taxable period. If the correct amount of tax due is less
than the amount shown on the return, paragraphs (1) and (2) of subsection (a) shall apply only to the lower amount.

(c) Negligence or intentional disregard of rules and regulations.—In the case of underpayment of any tax administered under this article which is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment due to negligence or intentional disregard of rules and regulations is for more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate: Provided, That these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided for in subsection (a).

(d) False or fraudulent return.—In the case of the filing of any false or fraudulent return with intent to evade any such tax, or in the case of willful failure to file a return with intent to evade tax, there shall be added to the tax due an amount equal to fifty percent thereof which shall be in lieu of the additions to tax provided for in subsections (a) and (c). The burden of proving fraud, willfulness or intent to evade tax shall be upon the tax commissioner.

(e) Additions to tax treated as tax.—Additions to tax prescribed under this section on any tax shall be assessed, collected and paid in the same manner as taxes.


(a) Failure to collect, account for, and pay over tax, or attempt to defeat or evade tax.—Any person required to collect, account for and pay over any tax administered under this article, who willfully fails truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penal-
ties provided by law, be liable for a money penalty equal
to the total amount evaded, or not collected, or not ac-
counted for and paid over. No additions to tax shall be
imposed under section eighteen for any offense to which
this subsection is applicable.

(b) **Fraudulent statement or failure to furnish state-
ment to employees.**—Any person required under the
provisions of section seventy-two, article twenty-one of
this chapter to furnish a statement to an employee, who
willfully furnishes a false or fraudulent statement, or
who willfully fails to furnish a statement in the manner,
at the time, and showing the information required by
said section, or regulations prescribed thereunder, shall
for each such failure be subject to a money penalty of
fifty dollars.

(c) **Fraudulent claim for refund or credit.**—In the
case of the filing of a false or fraudulent claim for refund
or credit with the intent to defraud this state, there shall
be added to such amount erroneously refunded or credited
a penalty equal to fifty percent thereof. No additions to
tax shall be imposed under section eighteen for any
offense to which this subsection is applicable. The burden
of proving fraud or intent to defraud shall be upon the
tax commissioner.

(d) **Collection of penalty.**—Any money penalty may
be collected in the same way as the tax imposed by this
article.

§11-10-20. **Effective date; transition rules.**

(a) The provisions of this article shall take effect on
the first day of July, one thousand nine hundred seventy-
eight, except to the extent modified in this section.

(b) The provisions of sections one through fourteen
shall apply on and after the effective date of this article
irrespective of when the tax liability arose: *Provided,*
That when the assessment has been made prior to the
effective date of this article, the rights and duties of the
taxpayer and the state of West Virginia shall be de-
termined with regard to the assessment, hearing and
appeals therefrom by the laws of the state of West Virginia as they existed prior to the effective date hereof, which laws shall be preserved and continued with respect to such assessment, hearing and appeals as fully and completely as if set forth in extenso herein.

(c) The provisions of sections fifteen through nineteen shall apply only with respect to taxes imposed for periods ending on or after the effective date of this article. Tax liabilities, if any, arising prior to the effective date of this article shall, with respect to additions to tax, penalties and interest, be determined, administered and assessed as if this act and the sections and articles it amends and reenacts or repeals had not been amended and reenacted or repealed, and the rights and duties of the taxpayers and the state of West Virginia shall be fully and completely preserved.

(d) Notwithstanding subsection (c) above, the provisions of sections sixteen, seventeen, eighteen and nineteen of this article may apply to tax liabilities arising during any period prior to the effective date of this article if (1) the tax commissioner has not issued an assessment with respect to such prior period, or (2) the tax commissioner has issued such assessment which is or may be the subject of a petition for reassessment and his decision thereon has not been issued as of the effective date of this article, and the taxpayer elects to have all of the provisions of sections sixteen, seventeen, eighteen and nineteen of this article apply as fully as if the same had been in effect at the time the tax liability arose. Such election shall be made within sixty days after assessment or within sixty days after the effective date of this article, whichever last occurs. No election under this subsection shall serve to shorten the statute of limitations upon assessments otherwise applying to tax liabilities arising prior to the effective date of this article.


If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalid-
validity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.
§11-11-10. Extension of time pending settlement of estate.
§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.
§11-11-16. 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.


Notwithstanding the limitations found in article ten of this chapter, all taxes imposed by this article upon any transfer, and the additions to tax, penalties and interest that may accrue thereon, shall, until paid, be and remain a charge and lien upon the property transferred, superior to any lien created after such transfer, and no title shall vest or be transferred as to any such property, except subject to the lien for such taxes, additions to tax, penalties and interest, and no such property shall be transferred or delivered, in whole or in part, until the payment into the treasury of the state of the amount of such tax: Provided, That this restriction shall not apply to the transfer or delivery of twenty-five hundred dollars or less from the balance of a joint bank account of which the decedent was a co-owner when such transfer or delivery is to the surviving co-owner or co-owners and such a co-owner or co-owners are within the class designated in section two (a) of this article. The person to whom the property is transferred, if he shall receive the same before the tax thereon is paid, and the executors, administrators and trustees having
charge of every estate so transferred, shall be personally
liable for such tax, additions to tax, penalties and inter-

test until its payment: Provided, however, That such
lien and the tax, additions to tax, penalties and interest
represented thereby shall not be enforceable or col-
lectible either against the property or from any person
whatsoever after the expiration of ten years from and
after the death of the decedent whose property is sub-
ject to tax under the provisions of this article, whether
there has been a qualification or not upon the estate of
the decedent. The limitation aforesaid shall apply re-
gardless of whether or not a personal representative
has been appointed or qualified upon the estate of the
decedent: Provided further, That the limitation of ten
years prescribed by this section shall not be construed
to apply to any suit or proceeding now pending and
undetermined, commenced prior to the tenth day of June,
one thousand nine hundred forty-nine, for the enforce-
ment of any such lien otherwise legally enforceable but
for said limitation.

§ 11-11-10. Extension of time pending settlement of estate.
1 Whenever it shall be necessary in the settlement of
any estate to retain property or funds for the purpose of
paying any liability, the amount or validity of which
is not determined, the time for payment of the whole
or a proportionate part of such tax may be extended to
await disposition of such claim.

1 All taxes imposed by this article shall be due and
payable at the death of the transferor and if paid within
ten months after the death of the transferor, a discount
of three percent shall be allowed and deducted. If not
paid within eleven months after the death of the trans-
feror, taxes due under this article shall be subject to
the provisions of article ten of this chapter regarding
additions to tax, penalties and interest, to be computed
from the expiration of eleven months from the date of
the death of the transferor until paid. The tax commis-
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.


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, devisor, 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
any, between such person and the person from whom the
property is transferred, and the relationship, if any, be-
tween such person and the person from whom the
property is transferred, as far as the commission or clerk
may have any information respecting such matters; the
nature of the property transferred, with such general
description and approximate valuation as the commis-
sion or clerk may be able to give. Any other person,
whether interested in such property or not, may make
a like report to the tax commissioner. Every such report,
whether by the clerk or by any other person, shall be
filed by the tax commissioner, and retained in his office
until the tax, additions to tax, penalties and interest be
paid on the transfers therein mentioned, or until it shall
be ascertained that they are not subject to tax, and shall
then be destroyed; and at all times such report shall
be confidential and privileged, and its contents shall not
be inspected or made known by anyone, except by the
tax commissioner as to any report made by a clerk, when
there shall be a question whether such clerk has com-
plied with the provisions of this article.

§11-11-14a. Transfer of bonds or stocks standing in the name of
decedent; reports by corporations.

No corporation incorporated under the law of this
state, and no registration or transfer agent thereof,
shall register or transfer any bonds or stock of the cor-
poration standing in the name of a decedent or joint
names of a decedent and one or more persons or in
trust for a decedent until ten days' notice to the tax
commissioner of the time of the transfer and until the
tax commissioner shall consent thereto in writing. A
corporation or agent registering bonds or making a trans-
fer without the consent of the tax commissioner under
this section shall be liable for any tax thereafter as-
sessed on account of the transfer of such securities to-
gether with accrued additions to tax, penalties and in-
terest as provided for in article ten of this chapter,
plus an additional penalty of one thousand dollars. This
liability may be enforced in the manner provided in
section eleven, article ten of this chapter.
If a corporation not incorporated in this state and owning property in the state, or the registration or transfer agent thereof, shall register or transfer on its books, bonds or stock of the corporation standing in the name of a resident decedent before taxes accruing under this article with respect to the transfer of such bonds or stock on the death of the decedent have been paid, such corporation or agent shall become liable for the payment of such taxes, additions to tax, penalties and interest. Property held by such a corporation or agent in this state shall be subject to execution to satisfy any liability of the corporation or agent under this section. A receipt or certificate of authority signed by the tax commissioner shall be full protection to either a domestic or foreign corporation or agent thereof in the transfer of any such bonds or stock.

The tax commissioner shall have authority to require that any reports necessary to a proper enforcement of this article be made by any corporation subject to the provisions of this section.

§11-11-14b. Annuity and investment contracts; payments to beneficiaries; notices to tax commissioner; penalties.

Every corporation, partnership, association, individual, order or society authorized to transact annuity contracts, investment contracts, or similar types or forms of policy or contract business within this state which shall pay to any named beneficiary, estate or trustee upon the death of a resident of this state, the proceeds of any such contract or policy shall, on the date of such payment, give notice thereof, in writing, to the tax commissioner of West Virginia, stating (a) the amount of such payment, (b) the name and address of each beneficiary, and (c) the time and manner of payment: Provided, That such notice shall not be required (1) when the policy or contract involved or the payment to be made is fifteen hundred dollars or less and is payable to the class designated in section two (a) of this article, and (2) when the amount of the policy or payment to be made is one thousand dollars or less.
Any such company so authorized to do business in this state, failing or refusing to comply with the provisions of this section, shall thereby become liable to the state for any amount of tax, additions to tax, penalties and interest which may be due on the amount of payment concerning which such company failed or refused to file the notice prescribed by this section.


The tax commissioner shall, as soon as may be, from the statements and reports made by the clerk and the personal representative or trustees or other person as aforesaid, from the inventory of the estate, if there be one, and from such other information as he may be able to procure, ascertain whether any transfer of any property be subject to a tax under the provisions of this article, and if it be subject to tax, shall ascertain and assess the amount of the tax to which it is subject. If in his opinion the transfer of any of the property so transferred is taxable under the provisions of this article, he shall make his assessment to that effect.

Notwithstanding the provisions of article ten of this chapter, the notice of assessment shall set out: (a) The amount of such property liable to such tax; (b) the rate of tax thereon; (c) the names of the beneficiaries thereof; (d) their degree of relationship to the decedent; and (e) the amount of tax; and it shall be the duty of the county clerk and personal representative of every such estate, and if there be no personal representative the beneficiaries thereof, to show in their report to the tax commissioner the information upon which to base such assessment. The tax commissioner shall make duplicate notices of his assessment, one of which he shall forward to such personal representative, trustee, grantee, vendee or bargainee. If the tax is not paid within sixty days after service of the notice of assessment, the tax commissioner may forward the other notice of assessment to the clerk of the county commission of the county wherein the property, or the greater part thereof in value is located, which notice of assessment shall be re-
§11-11-16. Transfers not reported to commissioner.

If any transfer be not reported to the tax commissioner by the clerk of the county commission or the executor, administrator, trustee, grantee, vendee, bargainee or donee, or other person, the tax commissioner may proceed, upon such information as he can obtain, to inquire and determine whether any such transfer is subject to tax under this article, and what tax, additions to tax, penalties and interest, if any, should be assessed, and shall proceed as to any such transfer and the property passing thereby, in all respects, as if the same had been reported to him as required by this article.

§11-11-18. Amended assessment; recordation.

Notwithstanding the provisions of article ten of this chapter or that any such notice of assessment may have been made and recorded, if it afterward appear to the tax commissioner that the transfer of the property mentioned in such notice of assessment, or any part thereof, is subject to any tax in addition to that mentioned in such notice of assessment, or that it is taxable in a case where such notice of assessment showed that it was not liable to such tax, he shall assess the proper tax thereon in addition to any tax which may have been theretofore assessed, and shall forthwith prepare a notice of amended assessment in duplicate, and forward one of such notices to each of the persons to whom his original notice of assessment was required to be forwarded. The notice of amended assessment, so forwarded to the clerk of the county commission, shall by him be forthwith recorded in the same book in which trust deeds and mortgages are recorded and he shall index the notice in the judgment or tax lien docket, and from the time of its admission to the record, shall constitute a lien on the property on which tax is assessed, for the amount of such taxes, additions to tax, penalties and any interest accruing thereon, until the same are paid, except as against purchasers.
for value, before such admission to record, and without
notice of such additional liability, and except as against
those who may claim under such purchaser, having pur-
chased for valuable consideration without notice of such
liability.

§11-11-20. Settlement by tax commissioner of dispute as to
relationship between decedent and transferee.

The tax commissioner may compromise and settle the
amounts of any such tax when there is a controversy
as to the relationship between the former owner of the
property and the person to whom it is transferred.

§11-11-25. Liability of fiduciaries and sureties.

Every fiduciary, and the sureties on his official bond,
shall be liable to the state for any taxes, additions to
tax, penalties and interest payable to the state on the
estate of his decedent, to the amount of the moneys and
the value of the property which come into his hands as
such fiduciary, and for the proceeds of all sales of real
estate received by him under the provisions hereof; and
if any such fiduciary fail to perform any of the duties
imposed on him by this article, he and his sureties shall
be liable upon his bond for any damages resulting from
such failure, the county commission under whose order
he qualified may revoke his authority, and he and his
sureties shall be liable to the same proceedings as if his
authority had been revoked for any other cause.

§11-11-27. Inspection of books by tax commissioner; crime.

In addition to the tax commissioner's powers set forth
in section five, article ten of this chapter, every person
having in his possession or control any book or paper
containing any information respecting property trans-
ferred, as aforesaid, shall, at the request of the tax com-
missioner, exhibit the same to him or to the prosecuting
attorney of the county, and any person in interest shall
make written answer under oath to any questions which
the tax commissioner may put in writing concerning
such property. Any person failing to comply with the
provisions of this section shall be guilty of a misde-
meanor, and, upon conviction thereof, be fined not less
than ten nor more than five hundred dollars.

§11-11-29. General procedure and administration.

Each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article
ten of this chapter shall apply to the tax imposed by this
article eleven with like effect as if said act were appli-
cable only to the tax imposed by this article eleven and
were set forth in extenso in this article eleven: Provided,
That where it is expressly and specifically provided in
this article eleven that a particular provision of this
article eleven shall govern and control notwithstanding
any provision contained in said article ten, such particular
provision of this article eleven shall govern and control.

ARTICLE 11A. INTERSTATE COMPROMISE OF INHERITANCE
AND DEATH TAXES.


When the state tax commissioner claims that a decedent
was domiciled in this state at the time of his death and
the taxing authorities of another state or states make a
like claim on behalf of their state or states, the state tax
commissioner may make a written agreement of com-
promise with the other taxing authorities and the execu-
tor or administrator that a certain sum shall be accepted
in full satisfaction of any and all inheritance taxes im-
posed by this state, including any additions to tax, interest
or penalties to the date of filing the agreement. The
agreement shall also fix the amount to be accepted by
the other states in full satisfaction of death taxes. The
executor or administrator is hereby authorized to make
such agreement. Either the state tax commissioner or
the executor or administrator shall file the agreement, or
a duplicate, with the authority that would be empowered
to assess inheritance taxes for this state if there had
been no agreement; and thereupon the tax shall be
deemed conclusively fixed as therein provided. Unless
the tax is paid within thirty days after filing the agree-
ment, additions to tax, interest and penalties shall there-
after accrue upon the amount fixed in the agreement but
the time between the decedent's death and the filing shall 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 the decedent died domiciled in this state, additions to tax, interest and penalties, if otherwise imposed by law, for nonpayment of inheritance taxes between the date of the agreement and of filing of the determination of the board as to domicile, shall not exceed eight percent per annum.

ARTICLE 12. BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX.

§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 section four of this article shall be for a period of one year beginning the first day of July and ending the thirtieth day of the following June.

5 If a registrant shall at any time knowingly or willfully file false data or information required by section four of this article, or shall willfully refuse or neglect to file any tax report or to pay the tax, additions to tax, penalties, or interest, or any part thereof, required by chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the tax commissioner may cancel his certificate. Before canceling 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.

Any person to whom a certificate of registration shall
be issued under the provisions of section four of this
article shall keep such certificate posted in a conspicuous
position in the place where the privilege of such business
is exercised. Such certificate of registration shall be
produced for inspection whenever required by the tax
commissioner or by any law-enforcement officers of this
state, county or municipality wherein the privileges to
conduct business are exercised.

No injunction shall issue from any court in the state
enjoining the collection of any business registration
certificate tax required herein; and any person claiming
that any business certificate is not due, for any reason,
shall pay the same under protest and petition the tax com-
missioner for a refund in accordance with the provisions
of section fourteen, article ten of this chapter.

If any person engaging in or prosecuting any business,
or trade, contrary to any other provisions of this article,
whether without obtaining a business certificate there-
for before commencing the same, or by continuing the
same after the termination of the effective period of any
such business certificate, the circuit court or the judge
thereof in vacation, of the county in which such violation
occurred, shall, upon proper application in the name of
the state, and after ten days’ written notice thereof to
such person, grant an injunction prohibiting such per-
son from continuing such business, activity or trade
until he has fully complied with the provisions of this
article. The remedy provided in this section shall be
in addition to all other penalties and remedies pro-
vided by law.

The tax commissioner shall make available, when
§11-12-9. Penalties.

In addition to the provisions of article ten of this chapter, any person engaging in or prosecuting any business contrary to the provisions of this article, whether without obtaining a business registration certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of any such certificate may, in addition to paying the business registration tax, additions to tax, penalties and interest, be liable for a penalty of fifty dollars for each month or fraction thereof during which he has been in default of the business registration tax. It shall be the duty of the tax commissioner to collect the full amount of the business registration tax, additions to tax, interest, and all penalties imposed.

§11-12-10. Collection of back taxes; notice of discontinuance of business.

Any person engaging in or prosecuting any business contrary to provisions of this article, whether without obtaining a certificate therefor before commencing the same, or by continuing the same after the termination of the effective period of such certificate, shall, in addition to all other penalties provided by law, be liable for the payment of all back business franchise registration taxes and the additions to tax, penalties and interest due thereon and the penalties imposed by this article for a period not exceeding three years.

Whenever any person ceases to engage in business within this state by reason of the discontinuance, sale or transfer or by any other means of disposition of the business, it shall be his duty to notify the tax commissioner in writing of the discontinuance, sale or transfer or other disposition of the business, the date thereof and the name and address of the seller or transferor and purchaser or transferee thereof.

Unless the notice shall have been given to the tax
commissioner as above provided, such seller or transferor and purchaser or transferee shall be jointly liable to the state of West Virginia for the amount of all taxes, additions to tax, penalties and interest due and unpaid under the provisions of this article or article ten of this chapter.

§11-12-14. Hearing; appeal.

Any person adversely affected by an order or decision of the tax commissioner, or his representative, relating to the granting or the canceling of the certificate, may appeal from such determination by requesting a hearing before the tax commissioner, or his examiner, if such request is made within sixty days from receipt of such order or decision. The hearing shall be held as provided in section nine, article ten of this chapter and the taxpayer may take an appeal as provided in section ten of said article ten.

§11-12-15. Enforcement.

Any employee of the state tax department so designated by the tax commissioner shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or municipality of this state, and such employee shall, before entering upon the discharge of his duties, execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office.

§11-12-18. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the business franchise registration tax imposed by this article twelve, sections one through seventeen, with like effect as if said act were applicable only to such business franchise regis-
TAXATION

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-23. General procedure and administration.


1 If the amount of a taxpayer's federal taxable income reported on his federal income tax return for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, the taxpayer shall report such changes or correction in federal taxable income within ninety days after the final determination of such change, correction, or renegotiation, or as otherwise required by the tax commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended federal income tax return shall also file within ninety days thereafter an amended return under this article, and shall give such information as the tax commissioner may require. The tax commissioner may by regulation prescribe such exceptions to the requirements of this section as he deems appropriate.

§11-12A-23. General procedure and administration.

1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article twelve-a with like effect as if said act were applicable only to the tax imposed by this article twelve-a and were set forth in extenso in this article twelve-a.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-13. Receivership or insolvency proceedings.


1 The assessment of taxes made under the provisions
of article ten of this chapter and the returns required therefor shall be for the year ending on the thirty-first day of December. If the taxpayer, in exercising a privilege taxable under this article, keeps the books reflecting the same on a basis other than the calendar year, he may, with the assent of the tax commissioner, make his annual returns and pay taxes for the year covering his accounting period, as shown by the method of keeping his books.

§11-13-13. Receivership or insolvency proceedings.

In the event a business subject to the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of such taxes as the same become due.


The tax commissioner may, with the approval of the governor, appoint not more than twelve agents for the entire state for the collection of delinquent taxes, delinquent license taxes and all additions to tax, penalties and interest. All delinquent taxes, delinquent license taxes and all additions to tax, penalties and interest so collected shall be, by the tax commissioner, paid into the state treasury to the credit of the state general fund. The salary of every such agent appointed shall be determined by the state tax commissioner by and with the approval of the governor.


Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article thirteen with like effect as if said act were applicable only to the tax imposed by this article thirteen and were set forth in extenso in this article thirteen.
§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.
§11-14-30. 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.

Every taxpayer subject to the tax imposed by this article shall make, on or before the last day of each month, to the commissioner a report of its operations during the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. The reports prescribed herein are required although a tax might not be due, or no business transacted, for the period covered by the report. For good cause shown, the commissioner may extend the time for filing said reports for a period not exceeding thirty days.

The reports and taxes due, as imposed by this article, shall be deemed as having been timely filed for the purpose of avoiding interest, additions to tax and penalties only if the postmark date thereon is clearly within the said last day of the calendar month, or is received within such period. If the last day falls on a Saturday or Sunday, or a day which is a legal holiday in the state of West Virginia, filing will be considered timely if it is done on the next succeeding day which is not a Saturday, Sunday or legal holiday.

A taxpayer shall keep such records necessary to verify the reports and returns required by this article, including inventories, receipts, disbursements, and any other records which the commissioner by regulation may prescribe, for a period of time not less than three years.

Unless otherwise permitted, in writing, by the commissioner, 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.
the funds collected under the provisions of this article
any tax, interest, additions to tax or penalties which
have been erroneously or illegally collected from any
person.

If any distributor or producer, retail dealer or im-
porter, while he shall be the owner thereof, loses any
gallons of gasoline or special fuel through fire, lightning,
breakage, flood or other casualty, which gallons have
been previously included in the tax by or for such per-
son, he shall be refunded a sum equal to the amount
of the tax paid upon such gallons so lost.

Any distributor or producer, retail dealer or importer
or other person who purchases or receives gasoline or
special fuel in this state upon which the tax imposed
by this article has been paid and who subsequently
exports the same from this state (except in a supply
tank), shall be entitled to a refund for the amount of
tax paid.

Every distributor or producer, retail dealer or im-
porter shall be entitled to a refund from this state of the
amount resulting from a change of rate decreasing the
tax under the provisions of this article on gasoline and
special fuel on hand and in inventory on the effective
date of such rate change, which gasoline and special fuel
shall have been included in any previous computations
by which the tax imposed by this article has been paid
by him.

No refund shall be made under this section unless a
written claim for refund is filed setting forth the cir-
cumstances upon which such refund is claimed. A claim
for refund shall be subject to the provisions of section
fourteen, article ten of this chapter. It shall be in such
form and supported with such records as the commis-
sioner may prescribe and shall be made under the pen-
alty of perjury. Claims for refund shall be filed with
the commissioner within three years from the end of
the month in which the tax was erroneously or illegally
paid or the gallons were exported or lost by casualty or
from change of rate, as provided in this section. Such
claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter.

§11-14-11. Refund of tax because of certain nonhighway uses.

The tax imposed by this article shall be refunded to any person who shall buy in quantities of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when consumed for the following purposes:

1. (1) As a special fuel for internal combustion engines not operated upon highways of this state, or

2. (2) Gasoline consumed to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the highways of this state, or

3. (3) Gasoline used by any railway company, subject to regulation by the public service commission of West Virginia, for any purpose other than upon the highways of this state, or

4. (4) Gasoline consumed in the business of manufacturing or producing natural resources or in mining or drilling therefor, or in the transportation of natural resources solely by means of unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor fuel or for any other purpose and which gasoline is not in any part used upon the highways of this state, or

5. (5) Gasoline consumed in motorboats or other watercraft operated upon the navigable waters of this state.

Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and consumed by such user, other than upon any highways of this state, and how used; and the commissioner upon the receipt of such affidavit and such paid sales slips
or invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

The right to receive any refund under the provisions of this section shall not be assignable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The commissioner shall cause a refund to be made under the authority of this section only when the claim for such refund is filed with the commissioner, upon forms prescribed by the commissioner, within four months from the month of purchase or delivery of the gasoline or special fuel except that any application for refund made under authority of subdivision (2) above shall be filed within twelve months from the month of purchase or delivery of such gasoline or special fuel. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment. Such claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter.

§11-14-lla. Refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services.

Upon certification by the county commission to the state tax commissioner that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service, the tax imposed by this article and paid by such organization shall be refunded.

Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and
consumed by such user, and the commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

The right to receive any refund under the provisions of this section shall not be assignable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The commissioner shall cause a refund to be made under the authority of this section only when the application for such refund is filed with the commissioner, upon forms prescribed by the commissioner, no later than the thirty-first day of August for purchases of fuel made during the preceding fiscal year ending the thirtieth day of June. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment. Such claim for refund shall also be subject to the provisions of section fourteen, article ten of this chapter.

*§11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.*

Any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, when such person purchases tax-paid gasoline or tax-paid special fuel, as required by this article, in an amount of twenty-five gallons or more, and complies with all the requirements of section eleven, with the exception of off-highway use, may be refunded an amount equal to four and one-half cents per gallon under authority of this section: Provided, That said gallons of gasoline or special fuel shall have been consumed in the operation 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.*
passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools. There shall be presented to the commissioner a claim for refund accompanied by proof of such purchase and payment as required by section eleven of this article. The right to a refund under this section shall not be assignable, and any assignment so made shall be void. Such claim for refund shall also be subject to the provisions of section fourteen, article 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 no tax is due, as required by this article, on the date prescribed therefor, unless it be shown that such failure is due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars 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 the tax imposed by this article shall be operated in connection with a receivership or insolvency proceeding, the court under whose direction such business is operated or was caused to be operated shall, by entry of a proper order in the cause, make provisions for the regular 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 Procedure and Administration Act" set forth in article ten of this chapter shall apply to the gasoline and special fuel excise tax imposed by this article fourteen with like effect as if said act were applicable only to such gasoline and special fuel excise tax imposed by this article fourteen and were set forth with respect thereto 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 article shall on or before the last day of January, April, July and October of every calendar year make to the commissioner such reports of its operations during the quarter ending the last day of the preceding month as the commissioner may require and such other reports from time to time as the commissioner may deem necessary. For good cause shown, the commissioner may extend the time for filing said reports for a period not exceeding thirty days.

2 Two or more taxpayers regularly engaged in the transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state. The taxes imposed shall be calculated on the basis of such joint reports as though such taxpayers were a single taxpayer; and the taxpayers making such reports shall be jointly and severally liable for the taxes. Such joint reports shall show the total number of highway miles traveled in this state and the total number of gallons of gasoline or special fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled shall not be allowed as credits to any other taxpayer; but taxpayers filing joint reports shall permit all taxpayers engaged in this state in pool operations with them to join in filing joint reports.

3 A taxpayer shall keep such records necessary to verify the highway miles traveled within and without the state of West Virginia, the number of gallons of gasoline and special fuel used and purchased within and without
West Virginia and any other records the commissioner by regulation may prescribe.

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, the commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records or records of highway miles traveled within and without West Virginia and the records of any other person to verify the truth and accuracy of any statement or report to ascertain whether the tax imposed by this article has been properly paid.

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, and as a further means of obtaining the records, books and papers of a taxpayer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records and papers, the commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds.

The commissioner is hereby authorized to refund from the funds collected under the provisions of this article and article fourteen of this chapter, the amount of the credit accrued for gallons of gasoline or special fuel purchased in this state but consumed outside of this state, if the taxpayer by duly filed claim requests the commissioner to issue a refund and if the commissioner is satisfied that said taxpayer is entitled to said refund and that said taxpayer has not applied for a refund of the tax imposed by article fourteen of this chapter: Provided, That the commissioner shall not approve a claim for refund when such claim for such refund is filed after
thirteen months from the close of the quarter in which
the tax was paid or the credit, as provided for in section
nine of this article, was allowed: Provided, however,
That such refund shall not be made until after audit of
the claimant's records by the commissioner or until
after a surety bond has been furnished by the claimant,
as hereinafter provided, in an amount fixed by the com-
missioner, conditioned to pay all road taxes due here-
under: Provided further, That said credit or refund shall
in no case be allowed to reduce the amount of tax to be
paid by a taxpayer below the amount due as tax on
gasoline or special fuel used as fuel in this state as
provided by article fourteen of this chapter. The right
to receive any refund under the provisions of this article
shall not be assignable and any attempt at assignment
thereof shall be void and of no effect. Such claim for
refund or credit shall also be subject to the provisions of
section fourteen, article ten of this chapter.

A taxpayer may furnish a continuous surety bond in
an amount fixed by the commissioner, but such amount
shall not be less than the total refunds due or to be paid
within one year. Upon completion of the filing of such
surety bond an annual notice of renewal, only, shall be
required thereafter.

The surety must be authorized to engage in business
within this state. The bond shall be conditioned upon
faithful compliance with the provisions of this article,
including the filing of the returns and payment of all tax
prescribed by this article. Such bond shall be approved
by the commissioner as to sufficiency and by the at-
torney general as to form, and shall indemnify the state
against any loss arising from the failure of the taxpayer
to pay for any cause whatever the motor carrier road
tax imposed by this article.

So long as the bond remains in force, the commissioner
may order refunds to the taxpayer in the amounts ap-
pearing to be due on claims duly filed by the taxpayer
under the provisions of this article without first auditing
the records of the carrier.
Any surety on a bond furnished hereunder shall be relieved, released and discharged from all liability accruing on such bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. This shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek discharge as herein provided, it shall be the duty of the principal of such bond to supply the commissioner with another bond, or pledge of property equal in value to the original bond, such pledge to be in the form of a tax lien on the property pledged and said lien shall be duly perfected in the office of the clerk of the county commission of the county wherein such property is situated and shall be submitted to the commissioner along with a certified appraisal statement as to the value of the property pledged prior to the expiration of the original bond. Failure to provide such bond or pledge may result in the commissioner canceling any registration card and identification marker previously issued to said person.

§11-14A-16. Penalty for failure to file required return when no tax due.

In the case of any failure to make or file a return when no tax is due, as required by this article, on the date prescribed therefor, unless it can be shown that such failure is due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for each month of such failure or fraction thereof.

§11-14A-27. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the motor carrier road tax imposed by this article fourteen-a with like effect as if said act were applicable only to such motor carrier road tax imposed by this article fourteen-a and were set forth with respect thereto in extenso in this article fourteen-a.
ARTICLE 15. CONSUMERS SALES TAX.

§11-15-4b. Liability of purchaser; assessment and collection.

If any purchaser refuses to pay the vendor the tax imposed by section three of this article, or in the case of a sale exempt from the application of the tax, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions.

In such cases the tax commissioner shall have authority to make an assessment against such purchaser, based upon any information within his possession or that may come into his possession. This assessment and notice thereof shall be made and given in accordance with sections seven and eight, article ten of this chapter.

This section shall not be construed as relieving the vendor from liability for the tax.


The taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing: (a) The total gross proceeds of his business for that month; (b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the
§11-15-17. Liability of officers of corporation, etc.

1 If the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association or corporation, and payment of the tax and any additions to tax, penalties and interest thereon imposed by article ten of this chapter may be enforced against them as against the association or corporation which they represent.


1 Each taxpayer shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices, bills of lading and such other pertinent documents in such form as the tax commissioner may by regulation require. Such records and other documents shall be preserved for a period of time not less than three years, unless the tax commissioner shall consent in writing to their destruction within that period or by order require that they be kept longer.


1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article fifteen with like effect as if said act were applicable only to the tax imposed by this article fifteen and were set forth in extenso in this article fifteen.

ARTICLE 15A. USE TAX.

§11-15A-12. Bond to secure payment.


§11-15A-22. Canceling or revoking permits.

Authorize any person subject to such tax and any retailer required or authorized to collect such tax, pursuant to the provisions of sections six and seven of this article, to file with him a bond issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in such amount as the tax commissioner may fix, to secure the payment of any tax, additions to tax, penalties and interest due or which may become due from such person. In lieu of such bond, securities approved by the tax commissioner, in such amount as he may prescribe, may be deposited with him, which securities shall be kept in the custody of the state treasurer and may be sold by him at public or private sale, after notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax, additions to tax, penalties and interest due. Upon any such sale, the surplus, if any, above the amounts due under this article and article ten of this chapter, shall be returned to the person who deposited the securities.


Every retailer required or authorized to collect taxes imposed by this article and every person using in this state tangible personal property purchased on or after the first day of July, one thousand nine hundred fifty-one, shall keep such records, receipts, invoices, and other pertinent papers as the tax commissioner shall require, in such form as the tax commissioner shall require.

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, the tax commissioner or any of his duly authorized agents is hereby authorized to examine the books, papers, records and equipment of any person either selling tangible personal property or liable for the tax imposed by this article, and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the amount due under the provisions of this article. Any such books, papers and
records shall be made available within this state for such
examination upon reasonable notice when the tax com-
missioner shall deem it advisable and shall so order.
However, where the taxpayer's records must be kept
out-of-state, the taxpayer may upon being notified by
the tax commissioner that an examination is to be made,
elect to do one of the following: (1) Forthwith transport
the required records to a convenient point in West Vir-
ginia and notify the tax commissioner that they are
available; or (2) pay the reasonable traveling expenses
of the tax commissioner's representatives from Charle-
ton, West Virginia, to the out-of-state place where the
records are kept, and return, and reasonable living ex-
penses of such representatives while engaged in their
examination.

§11-15A-22. Canceling or revoking permits.

Whenever any retailer maintaining a place of business
in this state, or authorized to collect the tax herein im-
posed pursuant to section seven of this article, fails to
comply with any of the provisions of this article or
any orders, rules or regulations of the tax commissioner
prescribed and adopted for this article under article ten
of this chapter, the tax commissioner may, upon notice
and hearing hereinafter provided, by order, cancel the
business franchise registration certificate, if any, issued
to such retailer under article twelve, chapter eleven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, or if such retailer is a corporation
authorized to do business in this state under section
seventy-nine, article one, chapter thirty-one of said code,
may certify to the secretary of state a copy of an order
finding that such retailer has failed to comply with
certain specified provisions, orders, rules or regulations.
The secretary of state shall, upon receipt of such certified
copy, revoke the permit authorizing said corporation to
do business in this state. and shall issue a new permit
only when such corporation shall have obtained from the
tax commissioner an order finding that such corporation
has complied with its obligations under this article. No
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.


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, summonses, 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 mutil-
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 fore, 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
§11-17-12. Reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

On or before the fifteenth day of each month, common carriers, wholesalers, subjobbers, retail dealers and agents, or vending machine operators, shall, when required by this article, or the tax commissioner, file a report covering the business transacted in the previous month covering such information as the commissioner may deem necessary for the ascertainment or assessment of the tax imposed by this article; and shall be signed under penalty of perjury on such forms as the tax commissioner may prescribe and shall at this time remit any taxes owed or due, if any.

The reports prescribed herein are required, although a tax might not be due, or no business transacted, for the period covered by the report.

Each person required to file a report under this article shall make and keep such records as shall be prescribed by the tax commissioner that are necessary to substantiate the returns required by this article including, but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than three years.

Unless otherwise permitted, in writing, by authority of the tax commissioner, each delivery ticket or invoice for each purchase or sale of cigarettes must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchasers, point of delivery, the date, quantity, price of the product, and the tax must be set out separately or the invoice must indicate whether or not the West Virginia cigarette excise tax is included in the total price and such other reasonable information as the tax commissioner may require. However, these invoicing requirements do not apply to cash sales, and a person making such sales must maintain such records
as may be reasonably necessary to substantiate his return.

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, the tax commissioner or his deputy or agent authorized by him shall have authority to inspect or examine the stock of cigarettes kept in and upon the premises of any person where cigarettes are placed, stored or sold and shall inspect or examine the records, books, papers, and any equipment or records of manufacturers, cigarette stamping agents, wholesalers, subjobbers, retail dealers, common carriers, or any other person for the purpose of determining the quantity of cigarettes acquired or disbursed to verify the truth and accuracy of any statement or report and to ascertain whether the tax imposed by this article has been properly paid.

In addition to the tax commissioner's powers set forth in section five, article ten of this chapter, and as a further means of obtaining the records, books and papers of a manufacturer, common carrier, wholesaler, subjobber or retailer or any other person and ascertaining the amount of taxes and reports due under this article the commissioner and his duly appointed agent shall have the power to examine witnesses under oath; and if the witness shall fail or refuse at the request of the tax commissioner or his duly appointed agent to grant access to the books, records or papers, the tax commissioner or such agent shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue summons to such party to appear before the tax commissioner or his agent, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of tax and reports due, if any.

§11-17-17. Enforcement powers.

1 Any employee or agent of the tax commissioner, so
designated by the tax commissioner, shall have all the
lawful powers delegated to members of the department
of public safety to enforce the provisions of this article
in any county or municipality in this state.

Such employee shall execute a bond with security in
the sum of thirty-five hundred dollars, payable to the
state of West Virginia conditioned for the faithful per-
formance of his duties, as such, and such bond shall be
approved as to form by the attorney general, and the
same shall be filed with the secretary of state and pre-
served in his office.

The state department of public safety or any county
sheriff or his deputy is, upon request of the commissioner,
hereby authorized and required to assist in the enforce-
ment of the provisions of this article.

§11-17-19. Penalty for failure to file return when no tax due; crimes.

(a) Penalty for failure to file required return where
no tax due.—In the case of any failure to make or file
a return when no tax is due, as required by this article
on the date prescribed therefor, unless it be shown that
such failure was due to reasonable cause and not due to
willful neglect, there shall be collected a penalty of
twenty-five dollars for each month of such failure or
fraction thereof.

(b) If any person:

(1) Makes any false entry upon an invoice, package
or container of cigarettes required to be made under
the provisions of this article, or with intent to evade the
tax imposed by this article, presents any such false entry
for the inspection of the commissioner, or

(2) Prevents or hinders the commissioner or his
deputy from making a full inspection of any place where
cigarettes subject to the tax imposed by this state are
sold or stored, or prevents or hinders the full inspection
of invoices, books, records or papers required to be kept
under the provisions of this article, or
(3) Sells cigarettes in this state without there having been first affixed to each individual package thereof the stamp or meter impression required to be affixed thereto by this article, or

(4) Being a retail dealer or subjobber in this state, has in his possession packages of cigarettes not bearing the stamps or meter impression herein required to be affixed thereto or, whoever fails to produce on demand by the commissioner invoices of all cigarettes purchased or received by him within two years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control, or

(5) If any wholesale dealer shall sell cigarettes to any person in this state other than to another wholesaler, subjobber or retail dealer and no person in this state other than a wholesaler or subjobber shall sell cigarettes to a retail dealer. It shall be unlawful and a violation of this article for any retail cigarette dealer to purchase or acquire cigarettes from any person other than a wholesaler or subjobber. The original wholesaler who purchases unstamped cigarettes from the manufacturer is liable for the excise tax and the affixing of the required stamps, or meter impressions, or

(6) If any person, firm or corporation, who is not a wholesaler of tobacco products, as provided by this article, shall have in his possession within the state more than twenty packages of cigarettes not bearing cigarette tax paid indicia of this state, stamps or meter impressions, such possession shall be presumed to be for the purpose of evading the payment of the taxes imposed or due thereon, or

(7) Whoever violates any of the provisions of this subsection or any lawful rule or regulation promulgated by the commissioner under authority of article ten of this code shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than three hundred dollars nor more than five thousand dollars,
or imprisoned in the county jail for not more than one
year, or both, in the discretion of the court.

(c) Whoever falsely or fraudulently makes, forges,
alters or counterfeits any stamps or meter impressions
prescribed, or defined, by the provisions of this article,
or its related rules and regulations, and any person who
knowingly and willfully makes, causes to be made, pur-
chases, receives or has in his possession, any device for
forging or counterfeiting any stamp or meter impression,
or has in his possession, any stamps not properly issued
by the commissioner or his agent or deputy or tampers
with or alters any stamping device authorized by the
commissioner, or uses more than once any stamp or meter
impression provided for and required by this article
for the purpose of evading the tax hereby imposed, shall
be guilty of a felony, and, upon conviction thereof, shall
be sentenced to pay a fine of not less than five thousand
dollars nor more than ten thousand dollars and impris-
oned in the penitentiary for a term of not less than one
year nor more than five years.

(d) Whenever the commissioner or any of his deputies
or employees authorized by him or any peace officer of
this state for the purpose shall discover any cigarettes
subject to tax as provided by this article and upon which
the tax has not been paid as herein required, such ciga-
rettes shall thereupon be deemed to be contraband, and
the commissioner, or such deputy or employee or any
peace officer of this state, is hereby authorized and em-
powered forthwith to seize and take possession of such
cigarettes, without a warrant, and such cigarettes shall
be forfeited to the state, and the commissioner shall
within a reasonable time thereafter sell such forfeited
cigarettes: Provided, That such seizure and sale shall
not be deemed to relieve any person from fine or im-
prisonment as provided herein for violation of any pro-
visions of this article. Such sale may be made in any
county the tax commissioner deems most convenient and
economical. Notice of such sale shall be published as a
Class I legal advertisement in compliance with the pro-
visions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All taxes and penalties collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.

(e) Magistrates shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

§11-17-22. General procedure and administration.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this section with like effect as if said act were applicable only to the tax imposed by this article seventeen and were set forth in extenso in this article seventeen.

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; forfeiture; collection of tax.


§11-19-5b. Additional penalty for late filing or payment.

In addition to the additions to tax, penalties and interest authorized in article ten of this chapter, if any taxpayer fails to file a return or pay the proper amount of tax within the time specified herein, the commissioner shall refuse to authorize the purchase of tax stamps or crowns by the delinquent taxpayer: Provided, That if the failure to pay was due to reasonable cause, the commissioner may waive this penalty. The taxpayer may request a hearing within sixty days after service of notice of the refusal of the commissioner to authorize the purchase of the tax stamps or crowns. Upon receipt of a written request for a hearing filed within the
time prescribed the provision for hearing and appeal, sections nine and ten, article ten of this chapter shall be applicable.

§11-19-7a. Seizure and sale of soft drink syrups by commissioner; forfeiture; collection of tax.

Whenever the commissioner or any of his duly authorized agents shall discover any soft drink syrups, subject to tax as provided by this article and upon which the tax has not been paid as herein required, the commissioner or his duly authorized agent is hereby authorized and empowered forthwith to seize and take possession of such soft drink syrups, which shall thereupon be deemed to be forfeited to the state; and the commissioner shall within a reasonable time thereafter sell such forfeited soft drink syrups; and from the proceeds of such sale shall collect the tax and interest due thereon, together with a penalty of fifty percent of the tax due and the cost incurred in such proceedings, and pay the balance, if any, to the person in whose possession such soft drink syrups were found: Provided, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided herein for violation of any provision of this article. Such sale shall be made in the county where most convenient and economical. Notice of such sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein such seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All moneys collected under the provisions of this section shall be paid into the state treasury and treated as other taxes collected under this article.


Any person who violates any of the provisions of this article or any lawful rule or regulation promulgated by the tax commissioner for this article under the authority of article ten of this chapter, for the violation of which no other penalty is provided by law, shall be guilty of a
misdeemeanor, and, upon conviction thereof, shall be
punished by a fine of not less than twenty-five dollars
nor more than one hundred dollars.


1 Each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article
ten of this chapter shall apply to the tax imposed by this
article nineteen with like effect as if said act were appli-
cable only to the tax imposed by this article nineteen
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
under this article is hereby made liable for such tax.
2 To the extent not inconsistent with the provisions of
this article, all of the provisions of article ten of this
chapter and section ninety-two of this article twenty-one,
relating to assessment and collection of taxes, and to
penalties, additions to tax and interest in respect thereto,
shall apply to every employer required to withhold tax
under this article. For such purposes any amount re-
quired to be withheld and paid over to the tax commis-
sioner shall be considered the tax of the employer. Any
amount of tax actually deducted and withheld under this
article shall be held to be a special fund in trust for the
tax commissioner. No employee shall have any right of
action against his employer in respect to any moneys
deducted and withheld from his wages and paid over to
the tax commissioner in compliance or in intended com-
pliance with this article.

§11-21-95. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article
ten of this chapter shall apply to the tax imposed by
this article twenty-one with like effect as if said act
were applicable only to the tax imposed by this article
ARTICLE 24. CORPORATION NET INCOME TAX.


(a) Failure to file returns, submit information, or pay tax.—Any person required under this article, or article ten of this chapter, to pay any tax or estimated tax, or required by law to make a return or declaration, keep any records, or supply any information, for the purpose of the computation, assessment or collection of any tax or estimated tax imposed by this article, who, at the time or times required by law, willfully fails to pay such tax or estimated tax, make such return or declaration, keep such records or supply such information, or willfully furnishes false and fraudulent information, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Failure to collect and pay over tax, or attempt to defeat or evade tax.—Any person required under this article to collect, account for, and pay over any tax imposed by this article, who willfully fails to collect or truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this article or the payment thereof, shall in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) False returns or certification.—Any person who willfully makes and subscribes a return which he does not believe to be true and correct as to every material matter, or who willfully makes a certification (as defined 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
8 RENTERS.

§11-25-8. Denial of claim; violation of article; assessment; interest and
9 penalties; crime.

§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 a claimant who was the recipient of public funds for the payment of his real property taxes or rent during the period for which the claim for relief was filed, or that such claimant received title to his homestead primarily for the purpose of receiving relief under this article, or that a claim for relief was filed with fraudulent intent, such claim for relief shall be disallowed in full, and, if any such claim for relief has been paid, the amount paid may be recovered by assessment in the same manner as taxes are assessed under article ten of this chapter and the assessment shall bear interest from the date of payment of the claim for relief, until refunded to the state tax commissioner, at the rate of one percent per month. Any claimant willfully and knowingly filing a fraudulent claim for relief, and any person who assisted in the preparation or filing of such fraudulent claim for relief or supplied information upon which such fraudulent claim for relief was prepared, with knowledge of such fraudulent intent of the claimant, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. If it is determined that a claim for relief is excessive and was through negligence incorrectly prepared, ten percent of the corrected claim for relief shall be disallowed, and if the claim for relief has been paid, the excessive portion of any amount paid and the ten percent disallowed shall be similarly recovered by assessment in the same manner as taxes are assessed under article ten of this chapter and the assessment shall bear interest from the date of payment of the claim for relief until refunded to the state tax commissioner at the rate of one percent per month.


1 Any claimant aggrieved by the denial in whole or in
part of his claim for relief, except when the denial is based upon the late filing of a claim for relief, may demand a hearing within thirty days after such denial by filing with the state tax commissioner a verified petition for hearing, which petition shall set forth with definiteness and particularity the reasons for objecting to such denial. In every case where a petition is filed, the state tax commissioner shall assign a time and place for a hearing upon the same and shall proceed in accordance with the provisions of article ten of this chapter and all of the applicable provisions of said article ten shall be applicable with like effect as if the petition were a petition for reassessment as provided in said article ten. In connection with holding any such hearing, the state tax commissioner shall have all of the relevant powers and authority set forth in said article ten. An appeal from a final decision of the state tax commissioner made after any such hearing may be taken by the claimant in accordance with the provisions of said article ten of this chapter, and such appeal shall be processed and determined with like effect as if said claimant were a "taxpayer" as that 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.

Every action or process to collect any tax (other than ad valorem tax on real or personal property and the taxes administered under the provisions of article ten, chapter eleven of this code), interest and penalty due the state or any subdivision thereof shall be brought or issued within five years next after the date on which the taxpayer is required by the statute or ordinance imposing the tax, interest and penalty to file a return and pay the tax due thereunder, unless a different limitation is specifically prescribed by such statute or ordinance. The limitation provided by this section shall likewise apply to enforcement of the lien, if any, securing the payment of such tax,
interest and penalty, but shall not apply in event of fraud or in event the taxpayer wholly fails to file the return required by the statute or ordinance imposing the tax.

The official of the state or any subdivision thereof who is charged with the duty of collecting any tax, interest and penalty, the collection of which is affected by the limitation hereinbefore provided, may, before the running of the five-year period of such limitation has been completed, enter into a written agreement with the taxpayer consenting to an extension of such period for an additional period of not to exceed two years, and any action or process may be brought or issued to collect such tax, interest and penalty at any time prior to the expiration of the period so agreed upon. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

The provisions of this section as hereby amended shall apply to tax periods ending on or after the first day of July, one thousand nine hundred seventy-eight, and the provisions of this section as in effect prior to the enactment hereof shall apply to tax periods ending before said 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
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 annual privilege taxes against the persons, on account of
the business and other activities, and in the amounts to
be determined by the application of rates against values
or gross income as set forth in sections two-a to two-m,
inclusive, of this article.

If any person liable for any tax under sections two-a,
two-b, two-l or two-m shall ship or transport his products
or any part thereof out of the state without making
sale of such products, the value of the products in the
condition or form in which they exist immediately be-
fore transportation out of the state shall be the basis
for the assessment of the tax imposed in said section,
except in those instances in which another measure of
the tax is expressly provided. The tax commissioner
shall prescribe equitable and uniform rules for ascertaining
such value.

In determining value, however, as regards sales from
one to another of affiliated companies or persons, or
under other circumstances where the relation between
the buyer and seller is such that the gross proceeds
from the sale are not indicative of the true value of
the subject matter of the sale, the tax commissioner
shall prescribe uniform and equitable rules for deter-
mining the value upon which such privilege tax shall
be levied, corresponding as nearly as possible to the
gross proceeds from the sale of similar products of like
quality or character where no common interest exists
between the buyer and seller but the circumstances
and conditions are otherwise similar.

Gross income included in the measure of the tax under
sections two-a, two-b, two-l and two-m of this article
shall neither be added nor deducted in computing the
tax levied under the other sections of this article.

A person exercising any privilege taxable under sec-
tion two-a, two-b, two-l or two-m of this article and
engaging in the business of selling his natural resources,
manufactured products or electricity at retail in this
state shall be required to make returns of the gross
proceeds of such retail sales and pay the tax imposed
in section two-c of this article for the privilege of 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 state in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or in part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), except electric power produced by public utilities or others, the amount of the tax to be equal to the value of the article, substance, commodity or newspaper, manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of eighty-eight one hundredths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state. The value of electricity generated by persons taxed under the provisions of this section, which electricity is directly used by such persons in the business of manufacturing and not sold or otherwise transferred or transmitted to others, shall be exempt from the imposition of any tax under this article. The dressing and processing of food by a person, firm or corporation, which food is to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in section two-c.

It is further provided, however, that in those instances in which the same person partially manufactures, com-
§11-13-2d. Public service or utility business.

1 Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to gross income of the business multiplied by the respective rates as follows:

Street and interurban and electric railways, one and four-tenths percent; water companies, four and four-tenths percent, except as to income received by municipally owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage in the supplying of public service but which do not generate or produce electric power shall be taxed on the gross income derived therefrom at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: Provided, however, That the sale of electric power under this section shall be taxed at the rate of two and forty-six
hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

§11-13-2k. Banking and other financial business; legislative findings.

Upon every person engaging or continuing within this state in the business of banking or financial business, from and after the first day of April, one thousand nine hundred seventy-one, the tax shall be equal to one and fifteen one-hundredths percent of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property: Provided, That gross income shall not include (a) interest received on the obligations of the United States, its agencies and instrumentalities, (b) interest received on the obligations of this or any other state, territory or possession of the United States, or any political subdivision of any of the foregoing or of the District of Columbia, or (c) interest
received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients: Provided, however, That all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Persons taxed pursuant to the provisions of this section shall not be taxed under sections two-a to two-j, inclusive, or section two-l or two-m of this article.

The Legislature hereby finds and declares that it is the intent of the Legislature to subject national banking associations and other financial organizations to the tax imposed by this article, in accordance with the authorization contained in section five thousand two hundred nineteen of the revised statutes of the United States as amended by Public Law 91-156 enacted the twenty-fourth day of December, one thousand nine hundred sixty-nine.

§11-13-2m. Business of generating or producing electric power; exception; rates.

Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.

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 municip-
23 ally 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.


(a) Any term used in this article shall have the same meaning as when used in comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context or by definition in this article.

(b) The term “industrial taxpayer” when used in this article shall mean any person liable for tax under article thirteen of this chapter exercising any of the following privileges:

(1) Any privilege taxable under section two-b or two-m of article thirteen of this chapter.

(2) Any privilege taxable under section two-h of article thirteen of this chapter: Provided, That such privilege is manufacturing for another, which privilege would be taxable under section two-b or two-m of article thirteen of this chapter if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of article 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.


There shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year. Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of the article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: Provided, That said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: Provided, however, That said exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit association organized under the provisions of the federal “Farm Credit Act of 1933”; (f) any credit union organized under the provisions of
chapter thirty-one, or any other chapter of this code: Provided further, That the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code; (g) gross income derived from advertising service rendered in the business of radio and television broadcasting; and (h) the gross income or gross proceeds of sale of a gasification or liquefaction of coal project in the demonstration, pilot or research stages: Provided, That prior to the commencement of operation of any such project, the tax commissioner shall have first certified the project as eligible for such exemption: Provided, however, That such exemption shall expire seven years from the date the project first receives gross 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.
§11-13-5. Return and remittance by taxpayer.


1 The taxes levied hereunder shall be due and payable as follows:
(a) For taxpayers whose estimated tax under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which he is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax to the office of the commissioner. In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year and one twelfth of the total exemption allowed for such year.

(b) For taxpayers whose estimated tax under this article does not exceed one thousand dollars per month, the tax shall be due and payable in quarterly installments within one month from the expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax to the office of the commissioner. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of the total exemption allowed for such year.

(c) When the total tax for which any person is liable under this article does not exceed two hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid, or, with the consent in writing of the tax commissioner, at the end of the month next following the close of the tax year.

(d) The above provisions of this section notwithstanding, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed above.

§11-13-5. Return and remittance by taxpayer.

1 On or before the expiration of one month after the end
of the tax year, each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable against him in accordance with the provisions of this article and deduct the amount of monthly or quarterly payments (as hereinbefore provided), if any, and transmit with his report a remittance in the form prescribed by the tax commissioner covering the residue of the tax chargeable against him to the office of the tax commissioner; such return shall be signed by the taxpayer if made by an individual, or by the president, vice president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The tax commissioner, for good cause shown, may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, 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 defined in section two of this article, a credit against business and occupation tax imposed by article thirteen of this chapter. The amount of credit shall be equal to ten percent of the cost of qualified investment made for industrial expansion as defined in section four of this article and shall be applied over a ten-year period to reduce the business and occupation tax imposed under sections two-b, two-h and two-m of article thirteen of this chapter at the rate of one tenth of the amount of such credit per taxable year, commencing with the taxable year that such qualified investment is first placed in service or use.

2. (b) Notwithstanding any provision herein to the contrary, the annual credit allowance shall not reduce the business and occupation tax imposed by sections two-b, two-h and two-m of article thirteen of this chapter below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax computed before application of the annual exemption allowed by section three of said article thirteen: Provided, That the tax imposed under section two-h of article thirteen shall not be reduced by more than fifty percent of the tax attributable to a privilege that is manufacturing for another and which privilege would be taxable under section two-b or two-m of article thirteen of this chapter if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of article thirteen of this chapter.

3. (c) No carry-over shall be allowed for the amount of
any unused portion of any annual credit allowance, nor
shall any credit be allowed against any tax liability for
any year prior to the twenty-fifth day of July, one thou­
sand nine hundred sixty-nine, by reason of an assessment
issuing within any period after the effective date of this
article, which assessment is, in whole or in part for any
period prior to the twenty-fifth day of July, one thousand
nine hundred sixty-nine.

(d) Effective date.—The provisions of this section, as
amended, shall apply to all property purchased for in­
dustrial expansion on or after the first day of April, one
thousand nine hundred seventy-eight. Property pur­
chased for industrial expansion shall be deemed to have
been purchased prior to the first day of April, one thou­
sand nine hundred seventy-eight, only if:

(1) The physical construction, reconstruction or erec­
tion of the property was begun prior to said first day of
April, or such property was constructed, reconstructed,
erected or acquired pursuant to a written contract exist­
ing on or before the thirty-first day of March, one thou­
sand nine hundred seventy-eight, and limited to the
provision of such contract as of such date, binding on
the taxpayer;

(2) The machinery or equipment was owned by the
taxpayer on or before the thirty-first day of March, one
thousand nine hundred seventy-eight, or was acquired
by the taxpayer pursuant to a binding purchase contract
which was in effect on such date;

(3) In the case of leased property, there was a binding
lease or contract to lease identifiable equipment in effect
on or before the thirty-first day of March, one thousand
nine hundred seventy-eight. As to property purchased
for industrial expansion prior to the first day of April,
one thousand nine hundred seventy-eight, or qualified
investments for industrial expansion placed into service
or use before said first day of April, the provisions of
this section as then in effect shall be fully and com­
pletely preserved.
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 cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate 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
that one rate of excise tax shall be applicable to all quantities of gasoline or special fuel in this state on and after the effective date of any increase in the rate of such tax. Any gasoline or special fuel on hand or in inventory on the effective date of any rate increase is hereby deemed to have been purchased or received on such date.

Every distributor, retail dealer or importer subject to the tax imposed under this article, who, on the effective date of any rate increase, has on hand or in inventory any gasoline or special fuel upon which tax or any portion thereof has been previously accrued or paid, shall, within thirty days after such effective date, take a physical inventory and file a report thereof with the commissioner, in the form prescribed by him, and shall pay to the commissioner at the time of filing such report any additional tax due under an increased rate.

*§11-14-12. Partial refund of tax on tax-paid gallonage consumed in buses.*

Any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons, when such person purchases tax-paid gasoline or tax-paid special fuel, as required by this article, in an amount of twenty-five gallons or more, and complies with all the requirements of section eleven, with the exception of off-highway use, may be refunded an amount equal to six cents per gallon under authority of this section: Provided, That said gallons of gasoline or special fuel shall have been consumed in the operation of urban and suburban bus lines, and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools. There shall be presented to the commissioner 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.*
payment as required by section eleven of this article.
The right to a refund under this section shall not be 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 the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously or illegally collected from any person.

If any distributor or producer, retail dealer or importer, while he shall be the owner thereof, loses any 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.
breakage, flood or other casualty, which gallons have
been previously included in the tax by or for such per­
son, he shall be refunded a sum equal to the amount
of the tax paid upon such gallons so lost.

Any distributor or producer, retail dealer or importer
or other person who purchases or receives gasoline or
special fuel in this state upon which the tax imposed
by this article has been paid, and who subsequently ex­
ports the same from this state (except in a supply tank),
shall be entitled to a refund for the amount of tax
paid.

Any dealer as defined in section two, article eleven-c,
chapter forty-seven of the code, who purchases or receives
gasoline or special fuel in this state upon which the tax
imposed by this article has been paid, shall be entitled to
an annual refund for gallons lost through evaporation.
Such refund shall be computed at the rate of tax imposed
per gallon under this article on all gallons of gasoline or
special fuel actually lost due to evaporation, not exceeding
one half of one percent of the adjusted total accountable
gallons, computed as determined by the commissioner.

Every distributor or producer, retail dealer or im­
porter shall be entitled to a refund from this state of the
amount resulting from a change of rate decreasing the
tax under the provisions of this article on gasoline and
special fuel on hand and in inventory on the effective
date of such rate change, which gasoline and special fuel
shall have been included in any previous computation
by which the tax imposed by this article has been paid
by him.

No refund shall be made under this section unless
a written petition therefor sets forth the circumstances
upon which said refund is claimed. A claim for refund
shall be subject to the provisions of section fourteen,
article ten, chapter eleven of the code. The petition shall
be in such form and with such supporting records as
required by the commissioner and shall be made under
the penalty of perjury. Petitions for refunds other than
for evaporation loss shall be filed with the commissioner.
within three years from the end of the month in which the tax was erroneously or illegally paid or the gallons were exported or lost by casualty, or in which a change of rate took effect, as provided in this section. Petitions for refund for evaporation loss shall be filed within three years from the end of the year in which such evaporation occurred, but no such refund shall be allowed for any period prior to the year one thousand nine hundred 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

(5. 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.


1 Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-eight, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred seventy-eight, and thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred seventy-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.


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred seventy-eight, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred seventy-eight, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred seventy-eight, shall be given effect.

(b) Certain terms defined.—For purposes of this article:

(1) The term "tax commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(2) The term "corporation" means and includes a joint-stock company or any association which is taxable as a corporation under the federal income tax law.

(3) The term "domestic corporation" means any corporation organized under the laws of West Virginia.

(4) The term "foreign corporation" means any corporation other than a domestic corporation.
(5) The term “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(6) The term “taxable year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(7) The term “taxpayer” means a corporation subject to the tax imposed by this article.

(8) The term “tax” includes, within its meaning, interest and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(9) The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(10) The term “compensation” means wages, salaries, commissions and any form of remuneration paid to employees for personal services.

(11) The term “West Virginia taxable income” means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted as provided in section six: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its “West Virginia taxable income” shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of section seven.

(12) The term “business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(13) The term “nonbusiness income” means all income other than business income.
(14) The term "public utility" means any business activity to which the jurisdiction of the public service commission of West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(15) The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term "this state" means the state of West Virginia.

CHAPTER 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 and upon the examination of title, as required by section twenty of this article, the purchaser shall discover
that the property purchased at such sale is the subject of an erroneous assessment or is otherwise nonexistent, such purchaser may submit the certificate of an attorney-at-law that the property is the subject of an erroneous assessment or is otherwise nonexistent, whereupon the sheriff shall cause the moneys so paid to be refunded: Provided, That the certificate shall be submitted by the first day of January of the year following the sale. Upon refund, the sheriff shall inform the assessor of the erroneous assessment for the purpose of having the assessor correct said error.

CHAPTER 106

(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 nonprofit 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
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
6A. Extended Benefits Program.
7. Claim Procedure.

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.
§21A-1-1. Purpose of chapter.

§21A-1-1. Purpose of chapter.

1. The purpose of this chapter is to provide reasonable and
effective means for the promotion of social and economic
security by reducing as far as practicable the hazards of unem-
ployment. In the furtherance of this objective, the Legislature
establishes a compulsory system of unemployment reserves in
order to:

(1) Provide a measure of security to the families of unem-
ployed persons.

(2) Guard against the menace to health, morals and welfare
arising from unemployment.

(3) Maintain as great purchasing power as possible, with
a view to sustaining the economic system during periods of
economic depression.

(4) Stimulate stability of employment as a requisite of
social and economic security.

(5) Allay and prevent the debilitating consequences of poor
relief assistance.

To give effect to these purposes the Legislature establishes
the following system in the belief that the purposes are reason-
ably within the sphere of governmental control and that the
agencies created for their accomplishment are the fairest and
most effective devices now available.

It is the specific intent of the Legislature that the provisions
of this article shall be construed as to comply with the Unem-
ployment Compensation Amendments of 1976 (Public Law
94-566) and for that reason the provisions of this chapter are
to be effective the first day of January, one thousand nine
hundred seventy-eight.


As used in this chapter, unless the context clearly requires
otherwise:

“Administration fund” means the employment security ad-
ministration fund, from which the administrative expenses
under this chapter shall be paid.

“Annual payroll” means the total amount of wages for
employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.

"Average annual payroll" means the average of the last three annual payrolls of an employer.

"Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year.

"Base period employer" means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

"Base period wages" means wages paid to an individual during the base period by all his base period employers.

"Benefit year" with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year. An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

"Benefits" means the money payable to an individual with respect to his unemployment.

"Board" means board of review.

"Calendar quarter" means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty or December thirty-one, or the equivalent thereof as the commissioner may by regulation prescribe.

"Commissioner" means the employment security commissioner.

"Computation date" means June thirty of the year imme
diately preceding the January one on which an employer’s con-
tribution rate becomes effective.

"Employing unit" means an individual, or type of organiz-
ation, including any partnership, association, trust, estate,
joint-stock company, insurance company, corporation (do-
mestic or foreign), state or political subdivision thereof, or
their instrumentalities, as provided in subdivision (9) (b) of the
definition of “employment” in this section, institution of higher
education, or the receiver, trustee in bankruptcy, trustee or
successor thereof, or the legal representative of a deceased
person, which has on January first, one thousand nine hun-
dred thirty-five, or subsequent thereto, had in its employ one
or more individuals performing service within this state.

"Employer" means:

(1) Until January one, one thousand nine hundred seventy-
two, any employing unit which for some portion of a day, not
necessarily simultaneously, in each of twenty different calendar
weeks, which weeks need not be consecutive, within either the
current calendar year, or the preceding calendar year, has had
in employment four or more individuals irrespective of whether
the same individuals were or were not employed on each of
such days;

(2) Any employing unit which is or becomes a liable em-
ployer under any federal unemployment tax act;

(3) Any employing unit which has acquired or acquires
the organization, trade or business, or substantially all the
assets thereof, of an employing unit which at the time of such
acquisition was an employer subject to this chapter;

(4) Any employing unit which, after December thirty-one,
one thousand nine hundred sixty-three, and until January one,
one thousand nine hundred seventy-two, in any one calendar
quarter, in any calendar year, has in employment four or more
individuals and has paid wages for employment in the total
sum of five thousand dollars or more, or which, after such date,
has paid wages for employment in any calendar year in the
sum total of twenty thousand dollars or more;
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;
(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

"Employment," subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the Federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(5) Service not covered under paragraph four of this subdivision and performed entirely without this state with respect to no part of which contributions are required and paid under
an unemployment compensation law of any other state or of
the federal government, shall be deemed to be employment
subject to this chapter if the individual performing such ser-
vices is a resident of this state and the commissioner approves
the election of the employing unit for whom such services are
performed that the entire service of such individual shall be
deemed to be employment subject to this chapter;

(6) Service shall be deemed to be localized within a state,
if: (a) The service is performed entirely within such state; or
(b) the service is performed both within and without such state,
but the service performed without such state is incidental to
the individual's service within this state, as, for example, is
temporary or transitory in nature or consists of isolated trans-
actions;

(7) Services performed by an individual for wages shall be
deemed to be employment subject to this chapter unless and
until it is shown to the satisfaction of the commissioner that:
(a) Such individual has been and will continue to be free from
control or direction over the performance of such services,
both under his contract of service and in fact; and (b) such
service is either outside the usual course of the business for
which such service is performed or that such service is per-
formed outside of all the places of business of the enterprise
for which such service is performed; and (c) such individual is
customarily engaged in an independently established trade,
occupation, profession or business;

(8) All service performed by an officer or member of the
crew of an American vessel (as defined in section three hun-
dred five of an act of Congress entitled Social Security Act
Amendment of 1946, approved August tenth, one thousand
nine hundred forty-six) on or in connection with such vessel,
provided that the operating office, from which the operations
of such vessel operating on navigable waters within and with-
out the United States is ordinarily and regularly supervised,
managed, directed and controlled, is within this state;

(9) (a) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of this state or any of its instrumentalities (or in the
employ of this state and one or more other states or their in-
strumentalities) for a hospital or institution of higher education
located in this state: Provided, That such service is excluded
from "employment" as defined in the Federal Unemployment
Tax Act solely by reason of section 3306 (c) (7) of that act
and is not excluded from "employment" under subdivision (11)
of the exclusion from employment;

(b) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of this state
or any of its instrumentalities or political subdivision thereof
or any of its instrumentalities or any instrumentality of more
than one of the foregoing or any instrumentality of any fore-
going and one or more other states or political subdivisions:
Provided, That such service is excluded from "employment"
as defined in the Federal Unemployment Tax Act by section
3306 (c) (7) of that act and is not excluded from "employ-
ment" under subdivision (15) of the exclusion from employ-
ment in this section; and

(c) Service performed after December thirty-one, one thou-
sand nine hundred seventy-seven, in the employ of a nonprofit
educational institution which is not an institution of higher
education;

(10) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of a religious, charitable, educational or other organi-
ization but only if the following conditions are met:

(a) The service is excluded from "employment" as defined
in the Federal Unemployment Tax Act solely by reason of
section 3306 (c) (8) of that act; and

(b) The organization had four or more individuals in em-
ployment for some portion of a day in each of twenty different
weeks, whether or not such weeks were consecutive, within
either the current or preceding calendar year, regardless of
whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United
States, performed outside the United States after December
thirty-one, one thousand nine hundred seventy-one (except in
Canada and in the case of Virgin Islands after December thirty-one, one thousand nine hundred seventy-one, and before January one of the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivisions (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

An "American employer," for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand
dollars or more to individuals employed in agricultural labor [not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in subparagraph (b) of this subdivision (12)], or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor (not taking into account service in agricultural labor performed before January one, one thousand nine hundred eighty, by an alien referred to in division (ii) of this subparagraph) ten or more individuals, regardless of whether they were employed at the same moment of time;

(b) Such service is not performed in agricultural labor if performed before January one, one thousand nine hundred eighty, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the Immigration and Nationality Act;

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

(d) For the purposes of this subdivision (12), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (c) of this subdivision (12), (i) such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount
equal to the amount of cash remuneration paid to such indi-
vidual by the crew leader (either on his own behalf or on be-
half of such other person) for the service in agricultural labor
performed for such other person;

(e) For the purposes of this subdivision (12), the term
"crew leader" means an individual who (i) furnishes individuals
to perform service in agricultural labor for any other person,
(ii) pays (either on his own behalf or on behalf of such other
person) the individuals so furnished by him for the service in
agricultural labor performed by them, and (iii) has not entered
into a written agreement with such other person under which
such individual is designated as an employee of such other
person;

(13) The term "employment" shall include domestic service
after December thirty-one, one thousand nine hundred seventy-
seven, in a private home, local college club or local chapter
of a college fraternity or sorority performed for a person who
paid cash remuneration of one thousand dollars or more after
December thirty-one, one thousand nine hundred seventy-
seven, in any calendar quarter in the current calendar year or
the preceding calendar year to individuals employed in such
domestic service.

Notwithstanding the foregoing definition of "employment,"
if the services performed during one half or more of any pay
period by an employee for the person employing him consti-
tute employment, all the services of such employee for such
period shall be deemed to be employment; but if the services
performed during more than one half of any such pay period
by an employee for the person employing him do not constitute
employment, then none of the services of such employee for
such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Service performed in the employ of this state or any
political subdivision thereof, or any instrumentality of this
state or its subdivisions, except as otherwise provided herein
until December thirty-one, one thousand nine hundred seventy-
seven;
(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in subdivision (9) (a) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or an instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603(c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications as comply with the general rules of the department;
(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of subparagraphs (i) and (ii) shall not be deemed to be applicable with respect to service per-
formed in connection with commercial canning or commercial
freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for
distribution for consumption;

(e) On a farm operated for profit if such service is not in
the course of the employer's trade or business or is domestic
service in a private home of the employer. As used in this
subdivision (5), the term “farm” includes stock, dairy, poultry,
fruit, fur-bearing animal, and truck farms, plantations, ranches,
greenhouses, ranges and nurseries, or other similar land areas
or structures used primarily for the raising of any agricultural
or horticultural commodities;

(6) Domestic service in a private home, except as provided
in subdivision (13) of the definition of “employment” in this
section;

(7) Service performed by an individual in the employ of
his son, daughter or spouse;

(8) Service performed by a child under the age of eighteen
years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an Ameri-
can vessel, performed on or in connection with such vessel, if
the operating office, from which the operations of the vessel
operating on navigable water within or without the United
States are ordinarily and regularly supervised, managed, di-
rected and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-
dealers or insurance companies, exclusive of industrial insur-
ance agents, or by agents of investment companies, who are
compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or
convention or association of churches, or an organization
which is operated primarily for religious purposes and which
is operated, supervised, controlled or principally supported
by a church or convention or association of churches; or (ii)
by a duly ordained, commissioned or licensed minister of a
church in the exercise of his ministry or by a member of a
religious order in the exercise of duties required by such
order; or (iii) prior to January one, one thousand nine hun-
dred seventy-eight, in the employ of a school which is not an
institution of higher education; or (iv) in a facility conducted
for the purpose of carrying out a program of rehabilitation for
individuals whose earning capacity is impaired by age or phys-
ical or mental deficiency or injury or providing remunerative
work for individuals who because of their impaired physical
or mental capacity cannot be readily absorbed in the competi-
tive labor market by an individual receiving such rehabilitation
or remunerative work; or (v) as part of an unemployment
work-relief or work-training program assisted or financed in
whole or in part by any federal agency or an agency of a state
or political subdivision thereof, by an individual receiving such
work relief or work training; or (vi) prior to January one, one
thousand nine hundred seventy-eight, for a hospital in a state
prison or other state correctional institution by an inmate of
the prison or correctional institution, and after December
thirty-one, one thousand nine hundred seventy-seven, by an
inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college
or university, if such service is performed (i) by a student who
is enrolled and is regularly attending classes at such school,
college or university, or (ii) by the spouse of such a student,
if such spouse is advised, at the time such spouse commences
to perform such service, that (I) the employment of such
spouse to perform such service is provided under a program to
provide financial assistance to such student by such school,
college or university, and (II) such employment will not be
covered by any program of unemployment insurance;

(13) Service performed by an individual under the age of
twenty-two who is enrolled at a nonprofit or public educa-
tional institution which normally maintains a regular faculty
and curriculum and normally has a regularly organized body of
students in attendance at the place where its educational activ-
ities are carried on as a student in a full-time program, taken
for credit at such institution, which combines academic instruc-
tion with work experience, if such service is an integral part
of such program, and such institution has so certified to the
employer, except that this subdivision shall not apply to
service performed in a program established for or on behalf
of an employer or group of employers;

(14) Service performed in the employ of a hospital, if such
service is performed by a patient of the hospital, as defined in
this section;

(15) Service in the employ of a governmental entity re-
ferred to in subdivision (9) of the definition of "employment"
in this section if such service is performed by an individual in
the exercise of duties (i) as an elected official; (ii) as a member
of a legislative body, or a member of the judiciary, of a state
or political subdivision; (iii) as a member of the state national
guard or air national guard; (iv) as an employee serving on a
temporary basis in case of fire, storm, snow, earthquake, flood
or similar emergency; (v) in a position which, under or pur-
suant to the laws of this state, is designated as (I) a major
nontenured policy-making or advisory position, or (II) a policy-
making or advisory position the performance of the duties of
which ordinarily does not require more than eight hours per
week.

Notwithstanding the foregoing exclusions from the defini-
tion of "employment," services, except agricultural labor and
domestic service in a private home, shall be deemed to be in
employment if with respect to such services a tax is required
to be paid under any federal law imposing a tax against which
credit may be taken for contributions required to be paid into
a state unemployment compensation fund, or which as a
condition for full tax credit against the tax imposed by the
Federal Unemployment Tax Act are required to be covered
under this chapter.

"Employment office" means a free employment office or
branch thereof, operated by this state, or any free public
employment office maintained as a part of a state controlled
system of public employment offices in any other state.

"Fund" means the unemployment compensation fund es-
tablished by this chapter.

"Hospital" means an institution which has been licensed,
certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition, all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.
(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of work he performs no services and with respect to which no wages are payable to him, or in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to one thousand nine hundred thirty-eight, has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after January one, one thousand nine hundred sixty-two, the term "wages" shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a
calendar year after one thousand nine hundred seventy-one;
and shall not include that part of remuneration which, after
remuneration equal to six thousand dollars is paid during a
calendar year after one thousand nine hundred seventy-seven,
to an individual by an employer or his predecessor with re-
spect to employment during any calendar year, is paid to such
individual by such employer during such calendar year unless
that part of the remuneration is subject to a tax under a federal
law imposing a tax against which credit may be taken for
contributions required to be paid into a state unemployment
fund. For the purposes of this subdivision (1), the term "em-
ployment" shall include service constituting employment under
any unemployment compensation law of another state; or
which as a condition for full tax credit against the tax im-
posed by the Federal Unemployment Tax Act is required to
be covered under this chapter; and, except, that for the pur-
poses of sections one, ten, eleven and thirteen, article six of
this chapter, all remuneration earned by an individual in
employment shall be credited to the individual and included
in his computation of base period wages: Provided, That the
remuneration paid to an individual by an employer with re-
spect to employment in another state or other states upon
which contributions were required of and paid by such em-
ployer under an unemployment compensation law of such
other state or states shall be included as a part of the remunera-
tion equal to the amounts of three thousand six hundred dol-
lars or four thousand two hundred dollars or six thousand dol-
lars herein referred to. In applying such limitation on the
amount of remuneration that is taxable, an employer shall be
accorded the benefit of all or any portion of such amount
which may have been paid by its predecessor or predecessors:
Provided, however, That if the definition of the term "wages"
as contained in section 3306(b) of the Internal Revenue Code
of 1954 as amended: (a) effective prior to January one, one
thousand nine hundred sixty-two, to include remuneration in
excess of three thousand dollars, or (b) effective on or after
January one, one thousand nine hundred sixty-two, to include
remuneration in excess of three thousand six hundred dol-
lars, or effective on or after January one, one thousand nine
hundred seventy-two, to include remuneration in excess of
four thousand two hundred dollars, or effective on or after January one, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

(2) The amount of any payment made after December thirty-one, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical or hospitalization expenses in connection with sickness or accident disability, or (D) death;

(3) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on
behalf of, an individual in its employ or his beneficiary (A)
from or to a trust described in section 401(a) which is exempt
from tax under section 501(a) of the Federal Internal Revenue
Code at the time of such payments unless such payment is
made to such individual as an employee of the trust as remu-
neration for services rendered by such individual and not as a
beneficiary of the trust, or (B) under or to an annuity plan
which, at the time of such payment, is a plan described in
section 403(a) of the Federal Internal Revenue Code;

(6) The payment by an employer (without deduction from
the remuneration of the individual in its employ) of the tax
imposed upon an individual in its employ under section 3101
of the Federal Internal Revenue Code;

(7) Remuneration paid by an employer after December
thirty-one, one thousand nine hundred fifty-two, in any medi-
num other than cash to an individual in its employ for service
not in the course of the employer’s trade or business;

(8) Any payment (other than vacation or sick pay) made
by an employer after December thirty-one, one thousand nine
hundred fifty-two, to an individual in its employ after the
month in which he attains the age of sixty-five, if he did
not work for the employer in the period for which such pay-
ment is made;

(9) Payments, not required under any contract of hire,
made to an individual with respect to his period of training
or service in the armed forces of the United States by an em-
ployer by which such individual was formerly employed;

(10) Vacation pay, severance pay, or savings plans re-
ceived by an individual before or after becoming totally or
partially unemployed but earned prior to becoming totally or
partially unemployed: Provided, however, That the term
totally or partially unemployed shall not be interpreted to
include employees who are on vacation by reason of
the request of the employees or their duly authorized agent,
for a vacation at a specific time, and which request by the
employees or their agent is acceded to by their employer.

Gratuities customarily received by an individual in the
course of his employment from persons other than his employ-
ing unit shall be treated as wages paid by his employing unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-3b. Financing benefits paid to employees of governmental entities; liability of governmental entities for payments.


§21A-5-5. Rate of contribution.


§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 payments.

Benefits paid to employees of governmental entities referred to in subdivision (9) (b) of the definition of "employment" in section three, article one of this chapter, shall be financed in the same manner and in accordance with the provisions of section three-a, article five of this chapter; except that for extended benefits reimbursement shall be one hundred percent of the benefits paid.

Any governmental entity which, pursuant to the provisions of this chapter, is, or becomes, subject to this chapter on or after January one, one thousand nine hundred seventy-eight,
shall be liable for payments and shall pay contributions in accordance with the provisions of this article and of this chapter, unless it elects to make payments in lieu of contributions as set forth in section three-a, such payments to commence on or before January one, one thousand nine hundred seventy-nine.

Governmental entities electing to make payments in lieu of contributions shall be liable for the full amount of extended benefits paid for weeks of unemployment beginning after December thirty-one, one thousand nine hundred seventy-eight.


The governor or any person or persons he may designate shall elect whether to finance unemployment compensation for the employees of this state or any of its agencies, bureaus, commissions, departments or other instrumentalities by choosing the contribution method or the reimbursement method. Nothing in this chapter shall be construed to require the state or any of its agencies, bureaus, commissions, departments or other instrumentalities to choose the same method of financing.

The county commission for each county or any of its agencies, bureaus, commissions, departments or other instrumentalities or the governing body for a municipality or any of its agencies, bureaus, commissions, departments or other instrumentalities shall elect whether to finance unemployment compensation liabilities by choosing the contribution method or the reimbursement method.

§21A-5-5. Rate of contribution.

On and after January first, one thousand nine hundred forty-one, an employer shall make payments to the unemployment compensation fund equal to two and seven-tenths percent of wages paid by him with respect to employment during each calendar year beginning with the calendar year one thousand nine hundred forty-one, subject, however, to other provisions of this article; except that on and after January first, one thousand nine hundred seventy-two, each employer subject to this chapter shall pay contributions at the rate of one and
five-tenths percent of wages paid by him with respect to em-
ployment during each calendar year until he has been an
employer for not less than thirty-six consecutive months
ending on the computation date; thereafter, his contribution
rate shall be determined in accordance with the provisions of
section ten of this article.

Notwithstanding any other provision of this chapter to the
contrary, on or after the first day of July, one thousand nine
hundred seventy-eight, any foreign corporation or business
entity engaged in the construction trades shall pay contributions
at the rate of two and seven-tenths percent of wages paid by
him with respect to employment during each calendar year.


(1) The commissioner shall maintain a separate account
for each employer, and shall credit his account with all
contributions paid by him prior to July first, one thousand
nine hundred sixty-one. On and after July first, one
thousand nine hundred sixty-one, the commissioner shall
maintain a separate account for each employer, and shall
credit said employer's account with all contributions of
such employer in excess of seven tenths of one percent of
taxable wages; and on and after July first, one thousand
nine hundred seventy-one, the commissioner shall maintain a
separate account for each employer, and shall credit said
employer's account with all contributions of such employer
in excess of four tenths of one percent of taxable wages:
Provided, That any adjustment made in an employer's account
after the computation date shall not be used in the com-
putation of the balance of an employer until the next fol-
lowing computation date: Provided, however, That nothing
in this chapter shall be construed to grant an employer or
individual in his service prior claims or rights to the amounts
paid by him into the fund, either on his behalf or on behalf
of such individuals. The account of any employer which has
been inactive for a period of four consecutive calendar years
shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular
and extended total unemployment beginning after the effective
date of this article shall be charged to the account of the last
employer with whom he has been employed as much as
thirty working days, whether or not such days are consecu-
tive: Provided further, That no employer's account shall be
charged with benefits paid to any individual who has been
separated from a noncovered employing unit in which he
was employed as much as thirty days, whether or not such
days are consecutive: And provided further, That benefits
paid to an eligible individual for regular and extended partial
unemployment beginning after the effective date of this act
shall be charged to the account of the claimant's current
employer: Provided, That no employer's account shall be
charged with more than fifty percent of the benefits paid
to an eligible individual as extended benefits under the
provisions of article six-a of this chapter: Provided, however,
That state and local government employers shall be charged
with one hundred percent of the benefits paid to an eligible
individual as extended benefits.

(3) The commissioner shall, for each calendar year here-
after, classify employers in accordance with their actual
experience in the payment of contributions on their own
behalf and with respect to benefits charged against their
accounts, with a view of fixing such contribution rates as
will reflect such experiences. For the purpose of fixing such
contribution rates for each calendar year, the books of
the department shall be closed on July thirty-one of the
preceding calendar year, and any contributions thereafter
paid, as well as benefits thereafter paid with respect to
compensable weeks ending on or before June thirty of the
preceding calendar year, shall not be taken into account
until the next annual date for fixing contribution rates:
Provided, however, That if an employer has failed to furnish
to the commissioner on or before July thirty-one of such
preceding calendar year the wage information for all past
periods necessary for the computation of the contribution
rate, such employer's rate shall be, if it is immediately prior
to such July thirty-one, less than three and three-tenths per-
cent, increased to three and three-tenths percent: Provided
further, That any payment made or any information necessary
for the computation of a reduced rate furnished on or before
the termination of an extension of time for such payment or
reporting of such information granted pursuant to a regulation
of the commissioner authorizing such extension, shall be taken
into account for the purposes of fixing contribution rates:

And provided further, That when the time for filing any report
or making any payment required hereunder falls on Saturday,
Sunday, or a legal holiday, the due date shall be deemed to
be the next succeeding business day: Provided, That whenever,
through mistake or inadvertence, erroneous credits or
charges are found to have been made to or against the
reserved account of any employer, the rate shall be adjusted
as of January one of the calendar year in which such mistake
or inadvertence is discovered, but payments made under any
rate assigned prior to January one of such year shall not be
deemed to be erroneously collected.

(4) The commissioner may prescribe regulations for the
establishment, maintenance and dissolution of joint accounts
by two or more employers, and shall, in accordance with such
regulations and upon application by two or more employers
to establish such an account, or to merge their several in-
dividual accounts in a joint account, maintain such joint
account as if it constituted a single employer's account.

(5) State and local government employers are hereby
authorized to enter into joint accounts and to maintain such
joint account or accounts as if it or they constituted a single
employer's account or accounts.

§21A-5-20. Qualifying wages for regular benefits of newly covered
workers during transition period on the basis of
previously uncovered services.

With respect to weeks of unemployment beginning on or
after January one, one thousand nine hundred seventy-eight,
wages for insured work shall include wages paid for previously
uncovered service. For the purposes of this section, the term
“previously uncovered services” means services:

(1) Which were not employment as defined in section
three of article one of this chapter, or by election pursuant
to section three of article five of this chapter, at any time
Ch. 106] UNEMPLOYMENT COMPENSATION 751

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 pub-

lication of rates.

§21A-6-15. Benefit payments for service with nonprofit organizations, state

hospitals, institutions of higher education, educational institu-
tions and governmental entities.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
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
without good cause involving fault on the part of the employer, if such individual leaves his work with an employer with whom he has been employed at least thirty working days or more for the purpose of returning to, and if he in fact, within a fourteen-day calendar period, does return to, employment with the last preceding employer with whom he was previously employed within the past year prior to his return to work day, and which last preceding employer, after having previously employed such individual for thirty working days or more, laid off such individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had such individual applied for such benefits. It is the intent of this paragraph to cause no disqualification for benefits for such an individual who complies with the foregoing set of requirements and conditions. Benefits paid to such individual under the provisions of this chapter shall, notwithstanding the provisions of subsection (2), section seven, article five of this chapter, and of subdivision (12) of this section three, be charged to the account of such last preceding employer with whom such individual was previously employed for thirty working days.

(2) For the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week; or for the week in which he was discharged from his last thirty-day employing unit for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his benefit year, whether or not such days are consecutive, the maximum benefit amount shall be increased by the amount of the decrease imposed under the disqualification; except that:

If he were discharged from his most recent work for one of the following reasons; or if he were discharged from his last thirty-day employing unit for one of the following reasons: Misconduct consisting of willful destruction of his employer’s property, assault upon the person of his employer
or any employee of his employer, if such assault is com-
mited at such individual's place of employment or in the
course of employment; reporting to work in an intoxicated
condition, or being intoxicated while at work; arson, theft,
larceny, fraud or embezzlement in connection with his work;
or any other gross misconduct; he shall be and remain dis-
qualified for benefits until he has thereafter worked for at
least thirty days in covered employment.

(3) For the week in which he failed without good cause to
apply for available, suitable work, accept suitable work
when offered, or return to his customary self-employment
when directed to do so by the commissioner, and for the four
weeks which immediately follow for such an additional period
as any offer of suitable work shall continue open for his
acceptance.

(4) For a week in which his total or partial unemployment
is due to a stoppage of work which exists because of a labor
dispute at the factory, establishment or other premises at
which he was last employed, unless the commissioner is
satisfied that he was not (one) participating, financing, or
directly interested in such dispute, and (two) did not belong
to a grade or class of workers who were participating, financ-
ing, or directly interested in the labor dispute which resulted
in the stoppage of work. No disqualification under this
subdivision shall be imposed if the employees are required
to accept wages, hours or conditions of employment sub-
stantially less favorable than those prevailing for similar work
in the locality, or if employees are denied the right of
collective bargaining under generally prevailing conditions, or
if an employer shuts down his plant or operation or dismisses
his employees in order to force wage reduction, changes in
hours or working conditions.

For the purpose of this subdivision, if any stoppage of
work continues longer than four weeks after the termination of
the labor dispute which caused stoppage of work, there shall be
a rebuttable presumption that that part of the stoppage of work
which exists after said period of four weeks after the termina-
tion of said labor dispute did not exist because of said labor
dispute; and in such event the burden shall be upon the em-
ployer or other interested party to show otherwise.

(5) For a week with respect to which he is receiving or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workmen's compensation law of any state or under a similar law of the United States;

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered em-
ployment and has been employed in covered employment at least thirty working days.

(7) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or pre-
paring to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(8) (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the pro-
visions of section 203 (a) (7) or section 212 (d) (5) of the Immigration and Nationality Act: Provided, That any modi-
fications to the provisions of section 3304 (a) (14) of the Federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated herein for the denial of benefits based on services
performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act shall be deemed applicable under the provisions of this section;

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits;

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he is unemployed because of his request, or that of his duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) For each week in which he is receiving or has received benefits under Title II of the Social Security Act or similar payments under any act of Congress and/or remuneration in the form of an annuity, pension, or other retirement pay from an employer or from any trust or fund contributed to by an employer. But if such remuneration for any week is less than the benefits which would otherwise be due him for such week under this chapter, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration: Provided, That if such amount of benefits is not a multiple of one dollar, it shall be computed to the next higher multiple of one dollar: Provided, however, That there shall be no disqualifi-
cation if in the individual's base period there are no wages
which were paid by the employer paying such remuneration,
or by a fund into which the employer has paid during said
base period. Claimant may be required to certify as to
whether or not he is receiving or has received remuneration
in the form of an annuity, pension, or other retirement pay
from an employer or from a trust fund contributed to by an
employer.

(12) For each week with respect to which he knowingly
made a false statement or representation knowing it to be
false or knowingly failed to disclose a material fact in order
to obtain or increase a benefit under this article. For each
week of disqualification he shall be disqualified an additional
five weeks and his maximum benefit amount shall be reduced
by an amount equal to five times his weekly benefit rate.
Such five weeks' disqualification periods are to run consecu-

tively beginning with the first week in which it is determined
a fraudulent claim was filed: Provided further, That an
individual shall not be disqualified under this subdivision for
a period of more than fifty-two consecutive weeks: And
provided further, That disqualification under this subdivision
shall not preclude prosecution under section seven, article
ten of this chapter.

(13) For the purposes of this section, an employer's ac-
count shall not be charged under any of the following condi-
tions: When benefits are paid for unemployment immediately
after the expiration of a period of disqualification for (a)
leaving work voluntarily without good cause involving fault
on the part of the employer, (b) discharge for any of the
causes set forth in subdivision (2) of this section, (c) failing
without good cause to apply for available suitable work, accept
suitable work, when offered, or to return to his customary
self-employment when directed to do so by the commissioner.

§21A-6-10. Benefit rate—Total unemployment; annual computa-
tion and publication of rates.

Each eligible individual who is totally unemployed in any
week shall be paid benefits with respect to that week at the
weekly rate appearing in Column (C) in Table A in this
paragraph, on the line on which in Column (A) there is indi-
cated the employee's wage class, except as otherwise provided
under the term "total and partial unemployment" in section
three, article one of this chapter. The employee's wage class
shall be determined by his base period wages as shown in
Column (B) in Table A. The right of an employee to receive
benefits shall not be prejudiced nor the amount thereof be
diminished by reason of failure by an employer to pay either
the wages earned by the employee or the contribution due on
such wages. An individual who is totally unemployed but
earns in excess of twenty-five dollars as a result of odd-job or
subsidiary work in any benefit week shall be paid benefits for
such week in accordance with the provisions of this chapter
pertaining to benefits for partial unemployment.

TABLE A

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit for Total and/or Partial Unemployment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Under $ 700.00</td>
<td>$ 12.00</td>
<td>$312.00</td>
</tr>
<tr>
<td>2</td>
<td>700.00</td>
<td>$ 13.00</td>
<td>$338.00</td>
</tr>
<tr>
<td>3</td>
<td>800.00</td>
<td>$ 14.00</td>
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<tr>
<td>4</td>
<td>900.00</td>
<td>$ 15.00</td>
<td>$390.00</td>
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<tr>
<td>5</td>
<td>1,000.00</td>
<td>$ 16.00</td>
<td>$416.00</td>
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<td>6</td>
<td>1,100.00</td>
<td>$ 17.00</td>
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<td>1,200.00</td>
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<td>8</td>
<td>1,300.00</td>
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<td>$494.00</td>
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<td>$ 21.00</td>
<td>$546.00</td>
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<td>11</td>
<td>1,600.00</td>
<td>$ 22.00</td>
<td>$572.00</td>
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<tr>
<td>12</td>
<td>1,700.00</td>
<td>$ 23.00</td>
<td>$598.00</td>
</tr>
<tr>
<td>13</td>
<td>1,800.00</td>
<td>$ 24.00</td>
<td>$624.00</td>
</tr>
</tbody>
</table>
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 section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty percent of the average weekly wage in West Virginia.

53 Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy, the maximum weekly benefit rate shall be forty-five percent of the average weekly wage in West Virginia.

54 Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-one, the maximum weekly benefit rate shall be fifty percent of the average weekly wage in West Virginia.

55 Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-three, the maximum weekly benefit rate shall be fifty-five percent of the average weekly wage in West Virginia.

56 The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the above formula, shall establish as many additional wage classes as are required, increasing the amount of base period wages required for each class by one hundred fifty dollars, the weekly benefit rate for each class by one dollar, and the maximum benefit by twenty-six dollars. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount.
Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the commissioner with the table required to be published by the foregoing provisions of this section.

Notwithstanding any of the foregoing provisions of this section, including Table A, on and after July one, one thousand nine hundred seventy-four:

(1) The maximum weekly benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

(2) The weekly benefit rate [Column (C) of said Table A] in each and every wage class, one through twenty-four, both inclusive [Column (A) of said Table A], shall be increased two dollars, and the maximum benefit in benefit year for total and/or partial unemployment [Column (D) of said Table A] in each and every wage class [Column (A) of said Table A], shall be increased fifty-two dollars.

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next higher dollar amount, if the computation exceeds forty-nine percent of a dollar amount. Such rounding off to the next higher dollar amount shall result in one additional wage class, with commensurate base period wage requirement of one hundred fifty
dollars over the preceding wage class, and with a maximum benefit increase over the preceding wage class of twenty-six dollars. Such an additional wage class shall be published by the foregoing provisions of this section.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-eight, the weekly benefit rate for each wage class by rounded dollar amount shall be fifty-five percent of one fifty-second of the median dollar amount of wages in base period for such wage class except that the weekly benefit rate for classifications one through twenty shall remain unchanged, but in any case the weekly benefit rate on or after July one, one thousand nine hundred seventy-eight, shall be in accordance with Table B below.

### TABLE B

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Wages in Base Period</th>
<th>Maximum Benefit Year for Total and/or Partial Unemployment</th>
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<td>2,200.00 - 2,349.99</td>
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<tr>
<td>221</td>
<td>83</td>
<td>13,150.00 - and over</td>
</tr>
</tbody>
</table>

After he has established such additional wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the previous calendar year which are furnished to the department on or
before June one following such calendar year. The average
weekly wage, as determined by the commissioner, shall be
rounded to the next higher dollar.

The computation and determination of rates as aforesaid
shall be completed annually before July one, and any such
new wage class, with its corresponding wages in base period,
weekly benefit rate, and maximum benefit in a benefit year
established by the commissioner in the foregoing manner
effective on a July one, shall apply only to a new claim
established by a claimant on and after said July one, and
shall not apply to continued claims of a claimant based on
his new claim established before said July one.

§21A-6-15. Benefit payments for service with nonprofit organiza-
tions, state hospitals, institutions of higher educa-
tion, educational institutions and governmental
entities.

(1) Benefits based on service in employment as defined in
subdivisions (9) and (10) of the definition of “employment”
in section three, article one of this chapter, shall be payable
in the same amount, on the same terms and subject to the
same conditions as compensation payable on the basis of
other service subject to this chapter; except that benefits
based on service in an instructional, research, or principal
administrative capacity in an institution of higher education
shall not be paid to an individual for any week of unemploy-
ment which begins during the period between two successive
academic years, or during a similar period between two
regular terms, whether or not successive, or during a period
of paid sabbatical leave provided for in the individual's
contract, if the individual has a contract or contracts to
perform services in any such capacity for any institution or
institutions of higher education for both such academic years
or both such terms.

(2) Benefits based on service in employment defined in
subdivisions (9) and (10) of the definition of “employment”
in section three, article one of this chapter, shall be payable
in the same amount, on the same terms and subject to the
same conditions as benefits payable on the basis of other
service subject to this act, except that:
a) With respect to service performed after December thirty-one, one thousand nine hundred seventy-seven, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during any holiday or vacation period, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) or prior to the beginning of such holiday or vacation period and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period: Provided, That subsection (1) of this section shall apply with respect to such services prior to January one, one thousand nine hundred seventy-eight;

(b) With respect to services performed after December thirty-one, one thousand nine hundred seventy-seven, in any other capacity for an educational institution (other than an institution of higher education as defined in section three of article one), benefits shall not be paid on the basis of such services to any individual for any week which commences during any holiday or vacation period, or during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms or prior to the beginning of such holiday or vacation period and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such holiday or vacation periods.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


As used in this article, unless the context clearly requires otherwise:

(1) “Extended benefit period” means a period which
(a) Begins with the third week after whichever of the following weeks occurs first:

(i) A week for which there is a national "on" indicator; or

(ii) A week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970 and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and state "off" indicator, respectively.

(2) There is a national "on" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and five-tenths percent. The rate of insured unemployment, for the purposes of this subsection, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period.

(3) There is a national "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (seasonally adjusted) for all states was less than four and five-tenths percent. The rate of insured unemployment, for the
purposes of this subsection, shall be determined by the secretary of labor by reference to the average monthly covered employment for the first four of the more recent six calendar quarters ending before the close of such period.

(4) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(a) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(b) Equaled or exceeded four percent.

(5) There is a "state 'off' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(a) Was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or

(b) Was less than four percent.

(6) "Rate of insured unemployment," for purposes of subdivisions (4) and (5) of this section, means the percentage derived by dividing

(a) The average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by

(b) The average monthly employment covered under this chapter for the first four of the most recent six completed
calendar quarters ending before the end of such thirteen-week period.

(7) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(b) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis
of which he could establish a new benefit year which would include such week; and

(c) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhauster.

(11) "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-8. Appeal from deputy's decision.

A claimant, last employer or other interested party, may file an appeal from the decision of the deputy within eight calendar days after notice of the decision has been delivered or mailed to the claimant and last employer as provided in section four of this article. The period within which an appeal from the decision of the deputy may be filed shall be stated in such notice. The decision of the deputy shall be final and benefits shall be paid or denied in accordance therewith unless an appeal is filed within such time.

Upon appeal from the determination of a deputy, an individual shall be entitled to a fair hearing and reasonable opportunity to be heard before an appeal tribunal as provided in section seven of this article.

Within eight days after receipt by the board of notice of appeal from the decision of a deputy, the board shall fix the time and place for hearing such appeal, and notify the claimant, last employer, and the commissioner, ten days in advance of the date set for hearing.

Upon consideration of all evidence the appeal tribunal
shall make a decision within twenty-one days after the date of the hearing and shall notify the claimant, last employer, and the commissioner of its findings and decision.

ARTICLE 11. LIMITATIONS ON CERTAIN PROVISIONS.

§21A-11-1. Expiration of certain provisions upon certain contingencies.

If United States Public Law 94-566, as enacted by the Congress of the United States or the federal acts it amends, should be adjudged unconstitutional or invalid in its or their application or stayed pendente lite as to state or local employees by a court of competent jurisdiction, then the coverage of those employees under this act is automatically stayed or repealed to the extent of the adjudged unconstitutionality, invalidity or inapplicability. The repeal shall be effective from the date of final disposition upon appeal or from the date of expiration of the right of appeal and shall apply to relevant matters pending at that time. If United States Public Law 94-566, as enacted by the Congress of the United States or those provisions thereof relating to coverage of state and local employees, should at any time be repealed by the Congress of United States, then the provisions of this chapter relating to coverage of state and local employees shall be automatically repealed and of no further force and effect.

CHAPTER 107

(Com. Sub. for H. B. 1138—By Mr. Otto)

[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.

The following Wheeling Creek Watershed protection and flood prevention district compact, which has been negotiated by representatives of the commonwealth of Pennsylvania and the state of West Virginia, is hereby approved, ratified, adopted, enacted into law and entered into by the state of West Virginia as a party thereto and signatory state, namely:

WHEELING CREEK WATERSHED PROTECTION AND FLOOD PREVENTION DISTRICT COMPACT

Article I. Recitation of Reasons for Compact.

WHEREAS, Wheeling creek, a tributary of the Ohio river, arises in Pennsylvania, flows through Washington and Greene counties of that commonwealth, enters the state of West Virginia, flows through Marshall and Ohio counties, West Virginia, and empties into the Ohio River at Wheeling, West Virginia; and

WHEREAS, The inhabitants of Marshall and Ohio counties, West Virginia, and, also, but to a much lesser degree, the inhabitants of Washington and Greene counties, Pennsylvania, living along Wheeling creek have over the years experienced loss of life and property from flooding of that stream; and
WHEREAS, Surveys made by the soil conservation service of the United States department of agriculture indicate that the inhabitants of the four counties named can best be protected from the flooding of Wheeling creek by flood prevention dams constructed thereon with some of the dams being located on the upper reaches of the stream and its tributaries in the commonwealth of Pennsylvania; and

WHEREAS, The federal Watershed Protection and Flood Prevention Act of 1954, as amended, authorizes, under certain circumstances, federal assistance to local organizations in preparing and carrying out undertakings for flood prevention and the conservation, development, utilization and disposal of water in watershed or subwatershed area; and

WHEREAS, No local organization within the meaning of the federal act aforesaid, established by or organized under the laws of West Virginia, is competent under state laws, to acquire land for, construct, and operate, with or without federal assistance, flood prevention facilities in the commonwealth of Pennsylvania, and it appears that no such local organization established by or organized under the laws of the commonwealth of Pennsylvania can justify the expenditure of locally raised funds to construct and operate flood prevention facilities which will benefit primarily the inhabitants of the neighboring state of West Virginia; and

WHEREAS, Facilities erected on the upper reaches of Wheeling creek and its tributaries for flood control and prevention can nevertheless have a recreational value for the citizens of both West Virginia and Pennsylvania and particularly the citizens of Ohio and Marshall counties, West Virginia, and Washington and Greene counties, Pennsylvania; accordingly, for purposes of promoting that potential, as well as providing a vehicle or means whereby federal assistance may be enlisted for the protection of citizens of her neighboring state of West Virginia from the flooding of Wheeling creek, the commonwealth of Pennsylvania joins with the state of West Virginia in negotiating and ratifying this compact; now therefore,
Article II. Wheeling Creek Watershed Protection and Flood Prevention District Created.

The commonwealth of Pennsylvania and the state of West Virginia hereby create as an agency and instrumentality of the governments thereof a district to be known as the “Wheeling creek watershed protection and flood prevention district,” hereinafter called the district, which shall embrace all territory in the commonwealth of Pennsylvania and the state of West Virginia, the water in which flows ultimately into Wheeling creek or its tributaries.

Article III. Wheeling Creek Watershed Protection and Flood Prevention Commission Created.

The commonwealth of Pennsylvania and the state of West Virginia hereby create as the governing body of the district the “Wheeling creek watershed protection and flood prevention commission,” hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the General Assembly of Pennsylvania and the Legislature of West Virginia or by act or acts of the Congress of the United States.

Article IV. Composition of Commission.

The commission shall consist of five commissioners from Pennsylvania and five commissioners from West Virginia, each of whom shall be a citizen of the commonwealth or state from which he is appointed. The commissioners from the commonwealth and from the state shall be chosen in the manner and for the terms provided by the laws of the commonwealth or state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the commonwealth or state from which he shall be appointed. Vacancies on the commission shall be filled in the manner provided by the laws of the commonwealth or state among whose representation on the commission the vacancy occurs.

The commissioners shall serve without compensation from the commission but they shall be paid by the commission
their actual expenses incurred and incident to the performance of their duties.

**Article V. Organization of Commission.**

The commission shall meet and organize within sixty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, and shall appoint, and at its pleasure remove or discharge, such officers and legal, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. It shall adopt a seal and suitable bylaws, and shall adopt and promulgate rules and regulations for its management and control. It may establish and maintain one or more offices within the district for the transaction of its business, and may meet at any time or place. The presence of three commissioners from the commonwealth of Pennsylvania and three commissioners from the state of West Virginia shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the commission.

**Article VI. Powers and Duties.**

The commission is hereby authorized and empowered:

(a) To be and serve in the capacity of a local organization within the meaning of the Watershed Protection and Flood Prevention Act of the eighty-third Congress of the United States, second session, (Public Law 566), approved August 4, 1954, as from time to time amended, and in that capacity the commission shall have the following authority and powers:

(1) To apply for and receive federal financial and other assistance in preparing and carrying out plans for works of improvement as that term is defined in said federal act, as from time to time amended, hereinafter referred to as works of improvement, and to apply for and receive federal financial and other assistance under the aforementioned or other federal acts in preparing and carrying out plans for public fish and wildlife or recreational development in connection with works of improvement, including the construction and operation of all facilities which may be necessary or incident to such
works of improvement and public fish and wildlife or recreational development in connection therewith.

(2) To acquire, or, with respect to interests in land to be acquired by condemnation, provide assurances satisfactory to the secretary of agriculture of the United States or other agent or agency of the United States that the commission will acquire such land, easements or right-of-ways as will be needed in connection with works of improvement, and public fish and wildlife or recreational development and facilities in connection with works of improvement, installed with federal assistance.

(3) To agree to operate and maintain any reservoir or other area included in a plan for works of improvement or public fish and wildlife or recreational development and facilities.

(4) To assume all or such proportionate share, as is determined by the secretary of agriculture of the United States or other agent or agency of the United States, of the cost of installing any works of improvement, involving federal assistance, which is applicable to the agricultural phases of the conservation, development, utilization and disposal of water or for fish and wildlife or recreational development and facilities or to purposes other than flood prevention and features relating thereto.

(5) To make arrangements satisfactory to the secretary of agriculture of the United States or other agent or agency of the United States for defraying costs of operating and maintaining works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement: Provided, That such arrangements shall be based solely upon contributions, allotments or commitments of funds to the district or commission.

(6) To acquire, or provide assurance that landowners or water users have acquired, such water rights, pursuant to the law of the commonwealth or state applicable thereto, as may be needed in the installation and operation of the works of improvement and public fish and wildlife or recreational de-
(7) To cooperate with soil conservation districts in obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of land situated in the drainage area above each retention reservoir to be installed with or without federal assistance.

(8) To apply for and receive federal loans or advancements to finance the local share of costs of carrying out works of improvement and public fish and wildlife or recreational development and facilities in connection with works of improvement, and to submit a plan of repayment satisfactory to the secretary of agriculture or other agent or agency of the United States for any loan or advancement: Provided, That such plan of repayment shall be based solely upon contributions, allotments or commitments of funds to the district or commission.

(9) To cooperate, and enter into agreements with, the secretary of agriculture of the United States or other agent or agency of the United States, and to do all other things required, not inconsistent with the provisions of this compact and the laws of the commonwealth of Pennsylvania and the state of West Virginia, to obtain maximum federal financial assistance for works of improvement and public fish and wildlife or recreational development and facilities in connection with such works of improvement.

(b) To acquire within the district, land, easements, right-of-ways and other property rights as may be needed in connection with works of improvement and public fish and wildlife or recreational development and facilities in connection with such works of improvement and to make studies respecting, and to plan, construct, maintain and operate works of improvement within the district and public fish and wildlife or recreational development and facilities in connection with such works of improvement.

(c) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, eminent domain or otherwise, any property, real or personal, or rights therein for any of the purposes specified in this article of the compact:
Provided, That eminent domain proceedings shall be instituted and prosecuted in the manner and forms provided by the laws of the commonwealth or state in which the property or property rights proceeded against are situate: Provided, however, that no property now or hereafter vested in or held by the commonwealth of Pennsylvania or the state of West Virginia, or by any county, city, town, village, district, township, municipality or other political subdivision thereof shall be taken by the district without the consent of the commonwealth, state or political subdivision which owns the same.

(d) To maintain, administer and improve any properties acquired, to charge fees for use of, and receive income from, such properties and to expend such income in carrying out the purposes and provisions of this compact, and to lease any of its property or interests therein in accordance with the following provisions and requirements: The board of commissioners of the County of Ohio, West Virginia, the county commission of Marshall County, West Virginia, the board of commissioners of Greene County, Pennsylvania, and the board of commissioners of Washington County, Pennsylvania, shall each have the option of leasing from the commission for such period as the lessee may specify all or any part of the works of improvement and the public fish and wildlife and recreational development and facilities in connection with works of improvement located within their respective counties upon the following terms and conditions: (a) That in each such lease the lessee in consideration thereof pay to the lessor the sum of one dollar and agree to fully maintain at its (the lessee's) expense all works of improvement and all such development and facilities in connection therewith located within the county of the lessee in accordance with the requirements of the Watershed Protection and Flood Prevention Act of the eighty-third Congress of the United States, second session, (Public Law 566), approved August 4, 1954, as from time to time amended, and all agreements and work plans made or formulated thereunder with respect to such works of improvement and such development and facilities in connection therewith located within the county of the lessee, and that for failure of the lessee to comply with such agreement, the lessor shall be given the 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
authority without the approval of the Wheeling Creek Watershed protection and flood prevention commission.

(e) To enter into contracts and other arrangements with agencies of the United States, with persons, firms or corporations, including both public and private corporations, with the government of the state and the government of the commonwealth, or any department or agency of the United States, the state or the commonwealth, with governmental divisions, with soil conservation, drainage, flood control, soil erosion or other improvement districts in the state or the commonwealth, for cooperation or assistance in constructing, improving, operating or maintaining works of improvement within the district, and public fish and wildlife or recreational development and facilities in connection with works of improvement, or in preventing floods, damage from sediment deposited by floodwaters, or in clearance of stream beds, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations or reports thereof.

(f) To apply for, receive and use grants-in-aid, donations and contributions from any source or sources, and to accept and use, consistent with the purposes of this compact, bequests, devises, gifts and donations from any person, firm, corporation, state, commonwealth or agency or political subdivision thereof.

(g) To do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes of said district herein set forth, and in promoting, developing and advancing the recreational development and facilities incidental to the works of improvement that shall be constructed to achieve said purposes.

(h) To delegate any authority given to it by law to any of its agents or employees, and to expend its funds in the execution of the powers and authority herein given.

(i) The commission, subject to the conditions herein, may sell, exchange or lease property, real or personal, or any interest therein.

When the property, or any interest or right therein, is being held for future use, it may be leased. When the real property,
or any part thereof, or any interest or right therein, is deemed by the commission not necessary, or desirable for present or presently foreseeable future use, it may be exchanged for other property, or any interest or right therein, deemed by the commission to be necessary or desirable for present or presently foreseeable future use, or may be sold. In addition the commission may exchange real property, or any part thereof, or any interest or right therein, even though it may be desirable or necessary for present or presently foreseeable future use, if the exchange is made for other real property, or any interest or right therein, in close proximity thereto which the commission deems of equal or superior value for presently foreseeable future use. In making exchanges the commission may make allowances for differences in values of the properties being exchanged and may move or pay the cost of moving buildings, structures or appurtenances in connection with the exchange.

Every such sale of real property, or any interest or right therein or structure thereon, shall be at public auction in the county in which the real property, or the greater part thereof in value, is located, and the commission shall advertise, by publication or otherwise, the time, place and terms of such sale at least twenty days prior thereto. The property shall be sold in the manner which will bring the highest and best price therefor. The commission may reject any and all bids received at the sale. The commission shall keep a record, open to public inspection, indicating the manner in which such real property or any interest or right therein or structure thereon, was publicly advertised for sale, the highest bid received therefor and from whom, the person to whom sold, and payment received therefor. Such record shall be kept for a period of five years and may thereafter be destroyed.

The commission may insert in a deed or conveyance, whether it involves an exchange, lease or sale, such conditions as are in the public interest.

All moneys received from the exchange, sale or lease of real or personal property, or any right or interest therein, shall be paid into the commission's treasury and used for the purpose for which the commission was created.
If the commission has heretofore sold and conveyed away or leased any such property, such transaction and the documents of lease or transfer therefor are hereby approved and confirmed and shall be as effective as if the authority to lease or convey the said property had been given in this statute as originally enacted.

Article VII. Fiscal Affairs.

The commission shall submit at the appropriate or designated time to the board of commissioners of the County of Ohio, West Virginia, the county commission of Marshall County, West Virginia, the board of commissioners of Greene County, Pennsylvania, and the board of commissioners of Washington County, Pennsylvania, an annual budget of its estimated expenditures, which budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the named governing bodies.

The commission shall not incur any obligation prior to the commitment or allotment of funds by the named governing bodies or by other sources adequate to meet the same.

The commission shall keep accurate accounts of all receipts and disbursements, which accounts shall be open for inspection at any reasonable time and shall be subject to audit by representatives of contributing political subdivisions and of the commonwealth of Pennsylvania and state of West Virginia. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws: Provided, That all receipts and disbursements of the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be transmitted to each contributor of funds to the district or commission.

Article VIII. Exemption from Taxes and Fees.

The district and the property belonging to the district shall be exempt from the payment of all taxes or fees imposed by the commonwealth of Pennsylvania or the state of West Virginia and by any agency and political subdivision thereof.
Article IX. Effective Date of Compact.

This compact shall become effective upon ratification by the General Assembly of the commonwealth of Pennsylvania and the Legislature of the state of West Virginia and upon 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 protection and flood prevention district compact shall be effective from the date of its enactment insofar as it relates to property situated in the state of West Virginia, but shall not apply to property situated in the commonwealth of Pennsylvania 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.

Upon a finding by the commissioner that a claimant has sustained a compensable injury within the meaning of section one of this article, and upon proof by proper physician's report, or otherwise, that disability will last longer than three days as provided in section five of this article, the commissioner shall immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and payment of the expenses provided for in subdivision (a), section three of this article relating to said injury without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payments.

The commissioner shall determine whether or not the claimant has sustained a compensable injury within the meaning of section one of this article, and shall commence payment of temporary total disability benefits as provided herein within fifteen days of receipt of the employee's or employer's report of injury, whichever is received sooner, and receipt of either a proper physician's report or any other information necessary for a determination.

Upon receipt of the first report of injury in a claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report on injury in the case, the employee shall be paid total temporary disability benefits for lost time at the maximum rate. The commissioner shall adjust the rate prospectively upon
receipt of proper information; however, notwithstanding any other provision of this section, the employer shall not be entitled to a credit or refund for previous over-payments caused by his failure to provide proper wage information. If the employee had more than one employer during the twelve months preceding the injury, any overpayment resulting from the provisions of this paragraph shall be charged only against the employer or employers who failed to supply wage information.

Upon a finding of the commissioner that a claimant, who has sustained a previous compensable injury which has been closed by an award of total temporary disability or permanent partial disability, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury giving rise to the former award, the commissioner shall immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and the expenses provided for in subdivision (a), section three of this article, relating to said disability, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payment.

Where the employer is a subscriber to the workmen's compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commissioner shall mail all workmen's compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

Where the employer has elected to carry his own risk under section nine, article two of this chapter, and upon the findings aforesaid, the commissioner shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. A copy of the order shall be sent to the
claimant. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. If the self-insured employer believes that his employee is entitled to benefits, he may start payments before receiving a pay order from the commissioner.

In the event that an employer files a timely objection to any finding or order of the commissioner, as provided in section one, article five of this chapter, with respect to the payment or continued payment of temporary total disability benefits and those expenses as outlined in subdivision (a), section three of this article, as provided herein, the commissioner shall continue to pay to the claimant such benefits and expenses during the period of such disability unless it is subsequently found by the commissioner that the claimant was not entitled to receive the temporary total disability benefits and the expenses provided for in subdivision (a), section three of this article, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, where the employer has elected to carry his own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him pursuant to a prior decision, such amount of benefits so paid shall be deemed overpaid. The commissioner may recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit such amount against the overpayment until it is repaid in full.

§23-4-5. Benefits for first three days after injury.

If the period of disability does not last longer than
three days from the day the employee leaves work as the result of the injury, no award shall be allowed, except the disbursements provided for in the two next preceding sections, but if the period of disability lasts longer than seven days from the day the employee leaves work as a result of the injury, an award shall be allowed for the first three days of such disability.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the provisions of this chapter for personal injury, such compensation shall be as provided in the following schedule:

(a) The expressions "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and "average weekly wage in West Virginia," as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article.

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof weekly benefits as follows: A maximum weekly benefit to be computed on the basis of seventy percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy, fifty percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-four, eighty percent; on or after July one, one thousand nine hundred seventy-five, one hundred percent.

The minimum weekly benefits paid hereunder shall not be less than twenty-six dollars per week for injuries occurring on or after July one, one thousand
nine hundred sixty-nine; not less than thirty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-one; not less than forty dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-three; not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four; and for injuries occurring on or after July one, one thousand nine hundred seventy-six, thirty-three and one-third percent of the average weekly wage in West Virginia.

(c) Subdivision (b) shall be limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding two hundred eight weeks.

(d) If the injury causes permanent total disability, benefits shall be payable during the remainder of life at the maximum or minimum weekly benefits as provided in subdivision (b) of this section for temporary total disability. A permanent disability of eighty-five percent or more shall be deemed a permanent total disability for the purpose of this section.

(e) If the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined, at the following maximum or minimum benefit rates: Seventy percent of the average weekly earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after July one, one thousand nine hundred sixty-nine, forty-five percent; on or after July one, one thousand nine hundred seventy-one, fifty-five percent; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-five, sixty-six and two-thirds percent.
The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be guided by but shall not be limited to the disabilities enumerated in the following table, and in no event shall the disability be less than that specified in the following table:

<table>
<thead>
<tr>
<th>Loss Description</th>
<th>Disability Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss of a great toe</td>
<td>10%</td>
</tr>
<tr>
<td>Loss of a great toe (one phalanx)</td>
<td>5%</td>
</tr>
<tr>
<td>Loss of other toes</td>
<td>4%</td>
</tr>
<tr>
<td>Loss of other toes (one phalanx)</td>
<td>2%</td>
</tr>
<tr>
<td>Loss of all toes</td>
<td>25%</td>
</tr>
<tr>
<td>Loss of forepart of foot</td>
<td>30%</td>
</tr>
<tr>
<td>Loss of foot</td>
<td>35%</td>
</tr>
<tr>
<td>Loss of leg</td>
<td>45%</td>
</tr>
<tr>
<td>Loss of thigh</td>
<td>50%</td>
</tr>
<tr>
<td>Loss of thigh at hip joint</td>
<td>60%</td>
</tr>
<tr>
<td>Loss of a little or fourth finger (one phalanx)</td>
<td>3%</td>
</tr>
</tbody>
</table>
The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.
The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one, or both eyes, the percentages of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-five percent disability. The total and irrecoverable loss of hearing of both ears shall be considered a sixty-five percent disability.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner makes the proper award for such injury, the commissioner shall make such award to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or noncompensable injury, the unpaid balance of such award
shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, That no payment shall be made to any widow of such claimant after her remarriage, and that this liability shall not accrue to the estate of such claimant and shall not be subject to any debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board shall have the force and effect of an award.

(i) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be the same proportion and shall be computed and allowed by the commissioner.

(j) The percentage of all permanent disabilities other than those enumerated in subdivision (f) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivision (d) or (e) of this section. Where there has been an injury to a member as distinguished from total loss by severance of that member, the commissioner in determining the percentage of disability may be guided by but shall not be limited to the disabilities enumerated in subdivision (f) of this section.

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either total temporary or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have
been paid or payable to the employee up to the time of his death, if he had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d) or (e).

(n) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due to occupational pneumoconiosis, as defined in section one of this article, the percentage of permanent disability shall be determined by the commissioner in accordance with the facts in the case and with the advice and recommendation of the occupational pneumoconiosis board. Compensation shall be paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n) of the preceding section of this article: Provided, That if it shall be determined by the commissioner in accordance with the facts
in the case and with the advice and recommendation of
the occupational pneumoconiosis board that an employee
has occupational pneumoconiosis, but without measurable
pulmonary impairment therefrom, such employee shall
be awarded and paid twenty weeks of benefits at the same
benefit rate as hereinabove provided.

If the employee dies from occupational pneumoconiosis,
the benefits shall be as provided for in section ten of this
article; as to such benefits sections eleven to fourteen,
inclusive, of this article shall apply.

In cases of permanent disability or death due to occupa-
tional pneumoconiosis, as defined in section one of this
article, accompanied by active tuberculosis of the lungs,
compensation shall be payable as for disability or death
due to occupational pneumoconiosis alone.

The provisions of section sixteen, article four and
sections one-a, one-b, one-c and one-d, article five of this
chapter providing for the further adjustment of claims
shall be applicable to the claim of any claimant who re-
ceives a permanent partial disability award for occupa-
tional pneumoconiosis.

§23-4-7. Release of medical information to employer; legisla-
tive findings; effect of application for benefits; duty
of employer.

(a) The Legislature hereby finds and declares that two
of the primary objectives of the workmen's compensation
system established by this chapter are to provide bene-
fits to an injured claimant promptly and to effectuate his
return to work at the earliest possible time; that the
prompt dissemination of medical information to the com-
missioner and employer as to diagnosis, treatment and
recovery is essential if these two objectives are to be
achieved; that claimants are increasingly burdened with
the task of contacting their treating physicians to request
the furnishing of detailed medical information to the
commissioner and their employers; that the commissioner
is increasingly burdened with the administrative respon-
sibility of providing copies of medical reports to the
employer involved, whereas in other states the employer can obtain the necessary medical information direct from the treating physician; that much litigation is occasioned in this state because of a lack of medical information having been received by the employer as to the continuing disability of a claimant; and that detailed narrative reports from the treating physician are often necessary in order for the commissioner, the claimant's representatives and the employer to evaluate a claim and determine whether additional or different treatment is indicated.

(b) In view of the foregoing findings, on and after the effective date of this section, a claimant shall irrevocably agree by the filing of his application for benefits that any physician may release, to the claimant's employer or its representative, from time to time to such claimant's employer medical reports containing detailed information as to the claimant's condition, treatment, prognosis and anticipated period of disability and dates as to when the claimant will reach or has reached his maximum degree of improvement or will be or was released to return to work. Whenever a copy of any such medical report is obtained by the employer or their representative and the physician has not also forwarded a copy of the same to the commissioner, the employer shall forward a copy of such medical report to the commissioner within ten days from the date such employer received the same from such physician.

§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy, and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence as well as all
statements under oath, if any, of the persons who appear before it on behalf of the employee or claimant, or employer and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his employment for a period of ten years during the fifteen years immediately preceding the date of his last exposure to such hazard and that such claimant or deceased employee has sustained a chronic respiratory disability, then it shall be presumed that such claimant is suffering or such deceased employee was suffering at the time of his death from occupational pneumoconiosis which arose out of and in the course of his employment. This presumption shall not be conclusive.

(c) The findings and conclusions of the board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis, and, if so, the percentage of permanent disability resulting therefrom.

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis, or other occupational disease.

(3) What, if any, physician appeared before the board on behalf of the claimant or employer, and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

If either party objects to the whole or any part of such findings and conclusions of the board, he shall file with the commissioner, within fifteen days from receipt of such copy to him, unless for good cause shown, the commissioner extends such time, his objections thereto
in writing, specifying the particular statements of the board's findings and conclusions to which he objects. After the time has expired for the filing of objections to the findings and conclusions of the board, the commissioner shall proceed to act as provided in this chapter. If after the time has expired for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board, and to the taking of testimony of other qualified physicians and roentgenologists.

§23-4-10. Classification of death benefits; “dependent” defined.

1 In case a personal injury, other than occupational pneumoconiosis or other occupational disease, suffered by an employee in the course of and resulting from his employment, causes death, and disability is continuous from date of such injury until date of death, or if death results from occupational pneumoconiosis or from any other occupational disease, the benefits shall be in the amounts and to the persons as follows:

9 (a) If there be no dependents, the disbursements shall be limited to the expense provided for in sections three and four of this article.

12 (b) If there be dependents as defined in subdivision (d) of this section, such dependents shall be paid for as long as their dependency shall continue in the same amount as was paid or would have been paid the deceased employee for total disability had he lived. The
order of preference of payment and length of dependence shall be as follows:

(1) A dependent widow or widower until death or remarriage of such widow or widower, and any child or children dependent upon the decedent until each such child shall reach eighteen years of age or where such child after reaching eighteen years of age continues as a full-time student in an accredited high school, college, university, business or trade school, until such child reaches the age of twenty-five years or if an invalid child to continue as long as such child remains an invalid. All such persons shall be jointly entitled to the amount of benefits payable as a result of employee’s death.

(2) A wholly dependent father or mother until death.

(3) Any other wholly dependent person for a period of six years after the death of the deceased employee.

(c) If the deceased employee leaves no wholly dependent person, but there are partially dependent persons at the time of death, the payment shall be fifty dollars a month, to continue for such portion of the period of six years after the death, as the commissioner may determine, but no such partially dependent person shall receive compensation payments as a result of the death of more than one employee.

Compensation under subdivisions (b) and (c) hereof shall, except as may be specifically provided to the contrary therein, cease upon the death of the dependent, and the right thereto shall not vest in his or her estate.

(d) Dependent, as used in this chapter, shall mean a widow, widower, child under eighteen years of age, or under twenty-five years of age when a full-time student as provided herein, invalid child or posthumous child, who, at the time of the injury causing death, is dependent in whole or part for his or her support upon the earnings of the employee, stepchild under eighteen years of age, or under twenty-five years of age when a full-time student as provided herein, child under eigh-
teen years of age legally adopted prior to the injury causing death, or under twenty-five years of age when a full-time student as provided herein, father, mother, grandfather or grandmother, who at the time of the injury causing death, is dependent in whole or in part for his or her support upon the earnings of the employee; and invalid brother or sister wholly dependent for his or her support upon the earnings of the employee at the time of the injury causing death.

(e) If a person receiving permanent total disability benefits dies from a cause other than a disabling injury leaving any dependents as defined in subdivision (d) of this section, a lump sum payment shall be made to such dependents in an amount equal to one hundred four times the weekly benefit the worker was receiving at 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 expenses.

The power and jurisdiction of the commissioner over each case shall be continuing and he may from time to time, after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified: Provided, That no further award may be made in fatal cases arising after March seventh, one thousand nine hundred twenty-nine, except within two years after the death of the employee, or in case of nonfatal injuries, on and after March seventh, one thousand nine hundred twenty-nine, except within five years after the death of the employee, or in case of nonfatal injuries, on and after March seventh, one thousand nine hundred twenty-nine, except within five years after payments for temporary disability shall have ceased or not more than two times within five years after the commissioner shall have made the last payment in the original award or any subsequent increase thereto in any permanent disability case: Provided, however, That no such modification or change may be made in any case in which no award has been made, except within five years after the date of injury: Provided further, That a further award may be made for medical benefits only
at any time. In any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and filed within the applicable time limit as prescribed herein, the commissioner shall pass upon and determine the merits of such application within thirty days after the filing thereof.

If such application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commissioner in support of his application, and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of such examination. Such reimbursement shall be made by the commissioner to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished the commissioner by the claimant, but shall in no case exceed the sum of one hundred dollars.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

§23-4A-2. To whom benefits paid.

§23-4A-1. Disabled workmen's relief fund created.

For the relief of persons who are receiving benefits pursuant to a permanent total disability award in amounts less than two hundred seventy-four dollars per month, and for the relief of widows who are receiving benefits on account of the death of an employee in amounts less than two hundred sixty dollars per month, and for the relief of children of employees deceased before one thousand nine hundred sixty-seven, who are under the age of twenty-three and who are full-time students, and for the relief of other persons who are receiving dependents' benefits on account of the death of an employee in amounts less than the specific monetary amounts set forth in section ten, article four of this chapter and in effect as of July one, one thousand nine hundred seventy-three, there is hereby created a separate fund to be known as the "Disabled
17 Workmen's Relief Fund,” which fund shall consist of such sums as are from time to time made available to carry out the objects and purposes of this article. Said fund shall be in the custody of the state treasurer and disbursements therefrom shall be made upon requisition signed by the commissioner to those persons entitled to participate therein and in such amounts to each participant as is provided in section three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's relief fund, an individual must be receiving workmen's compensation benefits by virtue of and under the laws of this state in amounts less than those set forth in section one of this article, and be receiving such benefits under a permanent total disability award or be receiving such benefits because of the death of an employee: Provided, That a child of an employee deceased before the first day of July, one thousand nine hundred sixty-seven, who is under the age of twenty-three and is a full-time student, and, who, at the time of injury causing death, was dependent in whole or part upon the earnings of the deceased employee, shall be eligible for benefits payable from the fund established by this article in the same manner and amount as if death had occurred after the first day of July, one thousand nine hundred sixty-seven.

ARTICLE 5A. DISCRIMINATORY PRACTICES.


1 No employer shall discriminate in any manner against any of his present or former employees because of such present or former employee's receipt of or attempt to receive benefits under this chapter.
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.

The Legislature hereby recognizes that an adequate site is necessary for the citizens of Jefferson County to conduct a county fair to enable youth and adults to exhibit livestock, horticultural products, agricultural products and home economics skills. Accordingly, the Legislature hereby finds and declares that transfers of any property, real or personal, made by county commissions to any person, organization or corporation for the furtherance of such activities promotes the cultural and educational welfare of the public and, therefore, is a public purpose.

The county commission of Jefferson County is hereby authorized and empowered to transfer and convey into the Jefferson County Fair Association, Inc., all that certain parcel of land situated within Middleway district of Jefferson County, West Virginia, east of Leetown on the north side of West Virginia state secondary Route No. 15, approximately two thousand two hundred thirty feet west of the intersection of West Virginia state secondary Route No. 15 with West Virginia state secondary Route No. 8, more particularly bounded and described as:

Beginning at a railroad spike in the northeastern right-of-way line of state secondary Route No. 15 and
in the division line between the lands of the Jefferson County Volunteer Fireman's Association land and the parcel herein described; thence, with said right-of-way line, N51-12-23E, 550.00 feet, to an iron pin; thence, leaving said right-of-way line, N28-48-15E, 1,263.46 feet to an iron pin in the southwestern line of a lane; thence, with said lane, S65-00E, 550.00 feet to a post in the aforementioned line of the Jefferson County Volunteer Fireman's Association land; thence, with said line S29-05-49W, 1,395.37 feet (passing through a post at 1,374.42 feet) to the place of beginning and containing 16.64 acres, more or less.

Any proper conveyance made by the county commission of Jefferson County transferring ownership for the above described parcel into the Jefferson County Fair Association, Inc., shall contain a provision that ownership of such property shall revert to the county commission should the land cease to be used as a fairgrounds.

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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.

The county commission of Morgan County is hereby authorized to make provisions in its budget and to expend
$45,050.00 of county funds for the purchase of a certain un-

improved tract situate in Cacapon District of Morgan County,

West Virginia, bounded and described as follows:

Beginning at corner number seven “A” of the recent forty

acre conveyance (Ashelman to Morgan County) being in

the line of Tract 23 Red Barn Subdivision, thence with

the line of said Tract 23, S 55 degrees -18'-42" E 75.03

feet to

(8) a Bathey T-Bar (found) thence S 85 degrees -00'-55" E

(passing a Bathey T-Bar at 150 feet) 414.06 feet to

(9) a Bathey T-Bar (found) thence S 64 degrees -28'-29" E

394.18 feet to

(10) a Bathey T-Bar (found) corner to Tracts 24 & 25 of

said subdivision, thence N 78 degrees -32'-32" E 132.02

feet to

(11) a Bathey T-Bar (found) thence S 71 degrees -28'-01" E

368.63 feet to

(12) a Bathey T-Bar (found) thence S 20 degrees -15'-11" W

763.4 feet to

(13) a Bathey T-Bar (found) a corner to H. Whisner and

being a corner of Parcel one and a corner to Parcel two

(D. B. 69 Pg. 536 Ashelman) thence with Whisner S 71

degrees -23'-47" E 940 feet to

(14) a dead white oak (found) a corner to Holliday and

Whisner (also a corner of Parcel three, D.B. 69 Pg. 536)

thence with Holliday S 27 degrees -53'-36" W (400 feet

to a number five rebar and another at 800 feet) 1363.41

feet to

(15) a number five rebar (set) in the line of Holliday thence

with a new division line into the lands of which this is

a part (first crossing Parcel three, then Parcel two

aforesaid) 47 degrees -45'-49" W 2661.89 feet to

(7B) a number five rebar (found) corner to the forty acres

aforesaid, thence with same N 42 degrees -14'-11" E
1023.58 feet to the place of beginning, containing 73±/- acres.

Subject to a right-of-way, reserved by Ashelman, forty feet wide, beginning at a corner Chestnut Oak (Double) and stone pile approximately thirty feet N.W. of West Virginia Sect. Rt. 9/17, a corner to the Holliday heirs, thence with an old logging road, N 12 degrees -23'-39" E 125.9'

thence N 23 degrees -26'-19" E 304.94'

thence N 25 degrees -34'-39" E 206.21'

thence N 16 degrees -55'-39" E 206.85'

thence N 14 degrees -11'-19" E 218.61'

thence N 20 degrees -32'-29" E 229.54'

thence N 17 degrees -29'-59" E 168.42'

thence N 09 degrees -14'-51" W 154.66' an intersection

thence N 50 degrees -14'-31" W 145.13'

thence N 57 degrees -28'-11" W 95.47'

thence W 75 degrees -23'-11" W 269.56' to beside an old, large blazed White Oak

thence N 89 degrees -00'-00" W crossing the division line.

And being a part of the lands conveyed to Margaret Ashelman, as recorded in Deed Book 69 at Page 536 in the office of the clerk of the county commission of Morgan County, at Berkeley Springs, West Virginia, to which reference is herein made for further particulars.

The tract is to be used as a sanitary landfill and for other public purposes.

The county commission of Morgan County is further authorized to finance the purchase of said real estate over a period not to exceed ten years, and to execute a lien thereon to secure payment of said purchase price.
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.

The West Virginia board of regents is hereby authorized and directed to offer for sale to, and, if sold, to convey unto the town of Shepherdstown, for the sum of one dollar, a parcel of land approximately 95 by 130 feet square located on the northeast corner of German and Princess Streets in Shepherdstown, containing a thirty-two room brick structure with two entrances on German Street known as Rumsey Hall, of the lands comprising Shepherd College. The exact location and dimension of such parcel shall be as agreed by the board of regents and the town of Shepherdstown and the parcel chosen shall be properly surveyed and a copy of such survey incorporated into the records of Jefferson County.

Such parcel shall be utilized by the town of Shepherdstown to fulfill the community's needs for senior citizens' programs, health programs, museums, library services or other public and civic services and activities.

If such parcel cease to be used for the purposes designated herein, it shall revert, be sold and reconveyed to the said board of regents upon payment of the specified consideration of one dollar by such board.
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.

The Legislature hereby finds and declares that, by a petition dated the seventh day of March, one thousand nine hundred seventy-seven, at least ten percent of the registered voters of Taylor County have requested the reformation, alteration and modification of the county commission of said county so that the number of members of said county commission shall be equal to the number of magisterial districts comprising said county. The Legislature further finds and declares that, by a letter dated the eleventh day of March, one thousand nine hundred seventy-seven, said county commission has requested the Legislature to so reform, alter and modify the same, as required by the provisions of section thirteen, article nine of the constitution of this state. The Legislature further finds and declares that it fulfills the requirements of said section thirteen by the provisions of this act.

§2. Reformation, alteration and modification of Taylor County commission; composition; quorum; application of laws.

The county commission of Taylor County is hereby reformed, altered and modified such that there shall be three 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
(5, 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 authorized to convey to the Little Huff Creek Health Association, Inc., a parcel of real estate situated in Huff Creek district, Wyoming County, West Virginia, and being more particularly bounded and described as follows, to wit:

7 Beginning at an iron spike near a culvert on the west side of US 52 and being the northeast corner of the Wyoming County board of education property; proceed-
ing thence with US 52 S 15 degrees 09' E 150.0 feet to an
iron pipe; thence leaving the US 52 right-of-way S 79
degrees 10' W 224.38 feet to a roof bolt; thence S 79
degrees 10' W 34.0 feet to a point in Little Huff Creek;
then thence N 1 degree 13' W 151.70 feet to a point in Little
Huff Creek; thence N 79 degrees 10' E 30 feet to a one
inch iron pipe; thence N 79 degrees 10' E 191.94 feet to
the point of beginning, and containing 0.85 acres, more
or less, as shown on a map attached hereto and made
a part hereof, and being more particularly designated
as follows: "Plat of survey showing 0.85 acre tract to be
conveyed to the Wyoming County commission by the
Wyoming County board of education situate on the
waters of Little Huff Creek on the west side of US
Route 52, Huff Creek district, Wyoming County, West
Virginia, scale: 1" = 100'. Date: October 31, 1977. Sur-
vey prepared by: David E. Jackson, L.L.S., P. O. Box
456, Pineville, West Virginia, 24874"; and being the
same property conveyed by the Wyoming County board
of education to the Wyoming County commission by
deed of record in the office of the clerk of the county
commission of Wyoming County, West Virginia, in
deed book 311, page 566, reference to which deed is
hereby made for a more particular description of the
property hereby authorized to be conveyed and for
reference to the restrictions thereon.

Said property shall be conveyed subject to those terms
and conditions set forth in that certain deed recorded in
the office of the clerk of the Wyoming County commission
in deed book No. 311, page 566. Said conveyance is here
authorized for the express purpose of providing a medical
service program for the benefit of the public school chil-
dren in Wyoming County and more particularly for the
benefit of the public school children in Huff Creek dis-
trict. Should said real estate cease to be used as required
in the deed from the Wyoming County board of education
to the Wyoming County commission as set forth by the
deed recorded in deed book 311, page 566, then title to
said real estate shall revert automatically to the Wyoming
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 to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property for the support of public schools may be increased in any school district for a period not to exceed five years, and in an amount not to exceed one hundred percent of such maximum rates, if such increase is approved, in the manner provided by law, by at least a majority of the votes cast for and against the same.

10 Notwithstanding any other provision of the constitution to the contrary, the maximum rates provided for tax levies
by school districts on the several classes of property may be
used entirely for current expense purposes; and all levies
required for principal and interest payments on any bonded
indebtedness, now or hereafter contracted, not to exceed
five per centum on the value of the taxable property there-
in, the value to be ascertained in accordance with section
eight of this article, shall be laid separate and apart and
in addition to such maximum rates, but in the same propor-
tions as such maximum rates are levied on the several classes
of property.

Notwithstanding the provisions of section eight of this
article relating to a vote of the people or any other pro-
visions of this constitution, a county board of education
may contract indebtedness and issue bonds for public school
purposes as provided by law, if, when submitted to a vote
of the people of the county, in the manner provided by
law, the question of contracting indebtedness and issuing
bonds is approved by a majority of the votes cast for and
against the same.

Resolved further, That in accordance with the provisions
of article eleven, chapter three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, such pro-
posed amendment is hereby numbered "Amendment No. 1"
and designated as the "School Levy and Bond Amendment,"
and the purpose of the proposed amendment is summarized as
follows: "To amend the State Constitution to permit county
school levies, indebtedness and bonds to be approved by a
simple majority of the votes cast for and against the same."

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 Government to use only steel produced in the United States for construction 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.

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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-
CONCURRENT RESOLUTIONS

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.


W. T. BROTHERTON, JR.  DONALD L. KOPP
President, State Senate  Speaker, House of Delegates

J. C. DILLON, JR.  C. A. BLANKENSHIP
Clerk, State Senate  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

HOUSE BILLS

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Chapter</th>
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<tbody>
<tr>
<td>739</td>
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SENATE BILLS

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</table>
### ACTIONS AND SUITS:

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
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<tr>
<td>Failure to appear in response to publication when order published</td>
<td>1</td>
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<td>Nonresident persons</td>
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<td>2</td>
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<td>Entry of judgment, decree or order</td>
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### ADOPTION:

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<thead>
<tr>
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<tr>
<td>Alien born children</td>
<td></td>
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</tr>
<tr>
<td>- Birth certificates</td>
<td></td>
<td></td>
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<tr>
<td>- Issuance upon adoption</td>
<td>49</td>
<td>301</td>
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### ALCOHOLIC LIQUORS:

<table>
<thead>
<tr>
<th>Description</th>
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<tr>
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<td>2</td>
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<td>- Operating expenses</td>
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<td>- Paid by agents</td>
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<td>- Utilities</td>
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### ANTITRUST LAW:

<table>
<thead>
<tr>
<th>Description</th>
<th></th>
<th></th>
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<tbody>
<tr>
<td>Actions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Limitation of</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>- Time within which to be commenced</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>- Venue</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Antitrust enforcement fund</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>- Attorney General</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Acceptance of assurance of voluntary compliance</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>- Form</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>- Where filed</td>
<td>3</td>
<td>17</td>
</tr>
<tr>
<td>- Actions by</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>- Money received as result of</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>- Use of</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>- Where placed</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>- On behalf of state residents</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>- Procedures</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>- Cooperation of public agencies with</td>
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<td></td>
</tr>
<tr>
<td>- In enforcement of article</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>- Cooperation with federal government</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>- In enforcement of article</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>- General powers and duties of</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>- Investigations by</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>- Proceedings instituted by</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>- Rules and regulations by</td>
<td>3</td>
<td>16</td>
</tr>
<tr>
<td>Article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Provisions of cumulative</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>- Severability of</td>
<td>3</td>
<td>17</td>
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</table>

[825]
### ANTITRUST LAW—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction of article</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>Contracts and combinations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In restraint of trade</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Unlawful</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>When deemed to restrain trade</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td>Damages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Action for</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Recovery of</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Amount</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Definitions</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Disposition of funds</td>
<td>3</td>
<td>15</td>
</tr>
<tr>
<td>Evidence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final judgment in civil proceeding as prima facie evidence</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Exemptions</td>
<td>3</td>
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<tr>
<td>Monopoly</td>
<td></td>
<td></td>
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<tr>
<td>Establishment, maintenance or use of unlawful</td>
<td>3</td>
<td>10</td>
</tr>
</tbody>
</table>

### APPROPRIATIONS:

<table>
<thead>
<tr>
<th>Budget Bill</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Making general appropriations for fiscal year 1978-1979</td>
<td>4</td>
<td>17</td>
</tr>
<tr>
<td>Supplemmenting, amending and transferring amounts between</td>
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<td></td>
</tr>
<tr>
<td>items of prior appropriations made to the 1977 Budget Bill</td>
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<td>19</td>
</tr>
<tr>
<td>Attorney General</td>
<td>5</td>
<td>95</td>
</tr>
<tr>
<td>Highways, Department of</td>
<td>8</td>
<td>98</td>
</tr>
<tr>
<td>Pinecrest State Hospital</td>
<td>6</td>
<td>96</td>
</tr>
<tr>
<td>Public Safety, Department of</td>
<td>7</td>
<td>97</td>
</tr>
</tbody>
</table>

### AUTOPSY:

<table>
<thead>
<tr>
<th>Transportation of bodies for</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs paid by state</td>
<td>33</td>
<td>203</td>
</tr>
<tr>
<td>Exception</td>
<td>33</td>
<td>203</td>
</tr>
</tbody>
</table>

### BANKS AND BANKING:

<table>
<thead>
<tr>
<th>Board of</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Created</td>
<td>11</td>
<td>102</td>
</tr>
<tr>
<td>Meetings</td>
<td>11</td>
<td>103</td>
</tr>
<tr>
<td>Members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>11</td>
<td>102</td>
</tr>
<tr>
<td>Compensation</td>
<td>11</td>
<td>103</td>
</tr>
<tr>
<td>Oath</td>
<td>11</td>
<td>103</td>
</tr>
<tr>
<td>Qualifications</td>
<td>11</td>
<td>102</td>
</tr>
<tr>
<td>Reappointment</td>
<td>11</td>
<td>103</td>
</tr>
<tr>
<td>Removal from office</td>
<td>11</td>
<td>103</td>
</tr>
<tr>
<td>Term</td>
<td>11</td>
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</tr>
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<td>Quorum</td>
<td>11</td>
<td>103</td>
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</table>

<table>
<thead>
<tr>
<th>Capital stock</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>12</td>
<td>104</td>
</tr>
<tr>
<td>How determined</td>
<td>12</td>
<td>104, 105</td>
</tr>
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</table>

<table>
<thead>
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<th>Deputy commissioner</th>
<th>Ch.</th>
<th>Page</th>
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<tr>
<td>Appointment</td>
<td>9</td>
<td>99</td>
</tr>
<tr>
<td>Bond</td>
<td>9</td>
<td>100</td>
</tr>
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<td>Experience</td>
<td>9</td>
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<tr>
<td>Tenure</td>
<td>9</td>
<td>99</td>
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</table>
## INDEX

### BANKS AND BANKING—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
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<td>Additional charge for outside state</td>
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<td>101</td>
</tr>
<tr>
<td>Costs and expenses of within state</td>
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</tr>
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<td>Collected by commissioner</td>
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### BIRTH CERTIFICATES:

See Adoption.

### BOARD OF PHARMACY:

Generic drugs
- Standards
  - Promulgation of rules and regulations

**Note:** The number for these entries is not provided in the table.

### BOARD OF REGENTS:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
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<tbody>
<tr>
<td>Advisory council of faculty</td>
<td>40</td>
<td>219</td>
</tr>
<tr>
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<tr>
<td>Election</td>
<td>40</td>
<td>220</td>
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<td>40</td>
<td>219</td>
</tr>
<tr>
<td>Meetings</td>
<td>40</td>
<td>219</td>
</tr>
<tr>
<td>Minutes</td>
<td>40</td>
<td>220</td>
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<td>40</td>
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<td></td>
<td></td>
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<td>40</td>
<td>220</td>
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<td>40</td>
<td>219</td>
</tr>
<tr>
<td>Commencement</td>
<td>40</td>
<td>220</td>
</tr>
<tr>
<td>Secretarial services</td>
<td>40</td>
<td>220</td>
</tr>
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<td>Advisory council of students</td>
<td>40</td>
<td>220</td>
</tr>
<tr>
<td>Chairman</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>40</td>
<td>221</td>
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<td>Election</td>
<td>40</td>
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<td>Reimbursement</td>
<td>40</td>
<td>221</td>
</tr>
<tr>
<td>Qualifications</td>
<td>40</td>
<td>220</td>
</tr>
<tr>
<td>Terms</td>
<td>40</td>
<td>221</td>
</tr>
<tr>
<td>Commencement</td>
<td>40</td>
<td>221</td>
</tr>
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<td>Secretarial service</td>
<td>40</td>
<td>221</td>
</tr>
<tr>
<td>Members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advisory council of faculty</td>
<td>40</td>
<td>218</td>
</tr>
<tr>
<td>Advisory council of students</td>
<td>40</td>
<td>218</td>
</tr>
<tr>
<td>Appointment</td>
<td>40</td>
<td>218</td>
</tr>
<tr>
<td>Number</td>
<td>40</td>
<td>218</td>
</tr>
<tr>
<td>Oath</td>
<td>40</td>
<td>219</td>
</tr>
<tr>
<td>Reappointment</td>
<td>40</td>
<td>219</td>
</tr>
<tr>
<td>Removal from office</td>
<td>40</td>
<td>219</td>
</tr>
<tr>
<td>Terms</td>
<td>40</td>
<td>218</td>
</tr>
<tr>
<td>Commencement</td>
<td>40</td>
<td>218</td>
</tr>
<tr>
<td>Vacancies</td>
<td>40</td>
<td>219</td>
</tr>
</tbody>
</table>

**Note:** The number for these entries is not provided in the table.

#### Rumsey Hall

Transfer to town of Shepherdstown by

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretarial service</td>
<td>40</td>
<td>220</td>
</tr>
<tr>
<td>Advisory council of faculty</td>
<td>40</td>
<td>220</td>
</tr>
<tr>
<td>Advisory council of students</td>
<td>40</td>
<td>221</td>
</tr>
<tr>
<td>Section</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td><strong>BOARD OF EDUCATION:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>County boards of education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vision and hearing testing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required to determine impairment</td>
<td>37</td>
<td>207</td>
</tr>
<tr>
<td>See School.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>BONDS, STATE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Road and highway bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance and sale</td>
<td>93</td>
<td>601</td>
</tr>
<tr>
<td><strong>BUDGET BILL:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Appropriations.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>BUSINESS AND OCCUPATION TAX:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Taxation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>BUSINESS FRANCHISE REGISTRATION CERTIFICATE TAX:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Taxation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CHARITABLE FUNDS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solicitation of Charitable Funds Act</td>
<td>13</td>
<td>106</td>
</tr>
<tr>
<td>Definitions</td>
<td>13</td>
<td>106, 107</td>
</tr>
<tr>
<td><strong>CHILD WELFARE:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adoption</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subsidies for</td>
<td>15</td>
<td>140</td>
</tr>
<tr>
<td>By Department of Welfare</td>
<td>15</td>
<td>140</td>
</tr>
<tr>
<td>Conditions for eligibility</td>
<td>15</td>
<td>141</td>
</tr>
<tr>
<td>Confidentiality of records</td>
<td>15</td>
<td>142</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abused child</td>
<td>14</td>
<td>111</td>
</tr>
<tr>
<td>Child</td>
<td>14</td>
<td>111</td>
</tr>
<tr>
<td>Delinquent child</td>
<td>14</td>
<td>112</td>
</tr>
<tr>
<td>General terms</td>
<td>14</td>
<td>112</td>
</tr>
<tr>
<td>Neglected child</td>
<td>14</td>
<td>111</td>
</tr>
<tr>
<td>Juvenile proceedings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Juvenile Proceedings.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parole of certain children</td>
<td>14</td>
<td>113</td>
</tr>
<tr>
<td>Purpose of law</td>
<td>14</td>
<td>110</td>
</tr>
<tr>
<td><strong>CIGARETTE TAX:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Taxation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CIRCUIT COURTS:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counties of same</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allowing court to be held concurrently in</td>
<td>29</td>
<td>195</td>
</tr>
<tr>
<td>Courts of record</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to sit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time limit</td>
<td>29</td>
<td>195</td>
</tr>
<tr>
<td>Opening of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>After first day of term</td>
<td>29</td>
<td>195</td>
</tr>
<tr>
<td>Vacation of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers of judges to act during</td>
<td>29</td>
<td>195</td>
</tr>
<tr>
<td>Judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacation of court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers during</td>
<td>29</td>
<td>195</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increasing amount of</td>
<td>28</td>
<td>194</td>
</tr>
</tbody>
</table>
# INDEX

## CIRCUIT COURTS—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>194</td>
</tr>
</tbody>
</table>

### Opening date

<table>
<thead>
<tr>
<th>After first day of term</th>
<th>________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>195</td>
</tr>
</tbody>
</table>

### Revised Uniform Reciprocal Enforcement of Support Act

See Domestic Relations.

### Terms and sessions

<table>
<thead>
<tr>
<th>Circuit</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fifth circuit</td>
<td>191</td>
</tr>
<tr>
<td>Twenty-second circuit</td>
<td>192</td>
</tr>
<tr>
<td>Twenty-fifth circuit</td>
<td>193</td>
</tr>
</tbody>
</table>

### Vacation

<table>
<thead>
<tr>
<th>Powers of judges to act during</th>
<th>________________</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>195</td>
</tr>
</tbody>
</table>

## CLAIMS AGAINST THE STATE:

### Finding claims against certain state agencies to be moral obligations and directing payment

<table>
<thead>
<tr>
<th>Agency</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor</td>
<td>16</td>
</tr>
<tr>
<td>Board of Regents</td>
<td>16</td>
</tr>
<tr>
<td>Board of Vocational Education</td>
<td>16</td>
</tr>
<tr>
<td>Department of Agriculture</td>
<td>16</td>
</tr>
<tr>
<td>Department of Corrections</td>
<td>16</td>
</tr>
<tr>
<td>Department of Education</td>
<td>16</td>
</tr>
<tr>
<td>Department of Health</td>
<td>16</td>
</tr>
<tr>
<td>Department of Highways</td>
<td>16</td>
</tr>
<tr>
<td>Department of Motor Vehicles</td>
<td>16</td>
</tr>
<tr>
<td>Department of Natural Resources</td>
<td>16</td>
</tr>
<tr>
<td>Nonintoxicating Beer Commission</td>
<td>16</td>
</tr>
<tr>
<td>Office of Economic and Community Development</td>
<td>16</td>
</tr>
</tbody>
</table>

## COAL:

### Gasification and liquefaction projects

<table>
<thead>
<tr>
<th>Tax exemptions</th>
<th>97</th>
</tr>
</thead>
</table>

## CODE AMENDED:

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>1</td>
<td>9, 21, 32, 34; 47*</td>
<td>240</td>
</tr>
<tr>
<td>3</td>
<td>2</td>
<td>3, 10, 11, 12, 13, 21, 22, 27, 28, 30</td>
<td>249</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>5a*</td>
<td>256</td>
</tr>
<tr>
<td>3</td>
<td>4A</td>
<td>11</td>
<td>257</td>
</tr>
<tr>
<td>3</td>
<td>5</td>
<td>1; 1a*; 6, 7, 9, 10</td>
<td>259</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
<td>5</td>
<td>264</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>5, 5a, 8, 12</td>
<td>266</td>
</tr>
<tr>
<td>3</td>
<td>9</td>
<td>13, 14, 24</td>
<td>276</td>
</tr>
<tr>
<td>4</td>
<td>9*</td>
<td></td>
<td>276</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>25</td>
<td>359</td>
</tr>
<tr>
<td>5</td>
<td>19*</td>
<td></td>
<td>203</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
CODE AMENDED—(continued):

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Regulation of parking at Capitol during sessions of the Legislature</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5A</td>
<td>4</td>
<td>1a</td>
<td>Disposition of certain surplus state property</td>
<td>283</td>
</tr>
<tr>
<td>5A</td>
<td>8</td>
<td>3a</td>
<td>Open governmental proceedings</td>
<td>611</td>
</tr>
<tr>
<td>6</td>
<td>9A</td>
<td>2, 3, 4, 5, 6; 7*</td>
<td>Authority of certain counties as to building and housing codes</td>
<td>162</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>3n</td>
<td>County information referral services</td>
<td>163</td>
</tr>
<tr>
<td>7</td>
<td>3</td>
<td>3a*</td>
<td>Local election for sale or demolition of county property</td>
<td>164</td>
</tr>
<tr>
<td>7</td>
<td>6</td>
<td>3a*</td>
<td>County treasurer authorized to make funds available to state board of investments</td>
<td>323</td>
</tr>
<tr>
<td>7</td>
<td>12</td>
<td>7a*</td>
<td>County development authorities authorized to exercise eminent domain</td>
<td>167</td>
</tr>
<tr>
<td>7</td>
<td>14</td>
<td>2</td>
<td>Definitions of deputy sheriffs</td>
<td>170</td>
</tr>
<tr>
<td>8</td>
<td>13</td>
<td>22a</td>
<td>Investment of municipal funds</td>
<td>324</td>
</tr>
<tr>
<td>8</td>
<td>19</td>
<td>1, 3, 4, 7-19</td>
<td>Municipal waterworks and electric power systems</td>
<td>438</td>
</tr>
<tr>
<td>8</td>
<td>20A</td>
<td>19, 22, 26</td>
<td>Neighborhood rehabilitation programs</td>
<td>451</td>
</tr>
<tr>
<td>8</td>
<td>22</td>
<td>19, 22, 26</td>
<td>Policemen's and Firemen's Pension and Relief Fund</td>
<td>456</td>
</tr>
<tr>
<td>11</td>
<td>10*</td>
<td></td>
<td>West Virginia Tax Procedure and Administration Act</td>
<td>623</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
<td>9, 10, 11, 13, 14a, 14b, 15, 16, 18, 20, 25, 27; 29*</td>
<td>Inheritance and transfer tax</td>
<td>655</td>
</tr>
<tr>
<td>11</td>
<td>11A</td>
<td>1</td>
<td>Interstate compromise of inheritance and death taxes, procedure and authority</td>
<td>663</td>
</tr>
<tr>
<td>11</td>
<td>11B</td>
<td>7</td>
<td>Interstate arbitration of inheritance and death taxes, additions, penalties and interest</td>
<td>664</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>5, 7, 9, 10, 14, 15; 18*</td>
<td>Business franchise registration certificate tax, times for which granted, display of certificate, penalties, collection of back taxes, hearing, appeal, enforcement, general procedure and administration</td>
<td>664</td>
</tr>
<tr>
<td>11</td>
<td>12A</td>
<td>6a*, 23*</td>
<td>Annual tax on incomes of certain carriers. report of change in federal taxable income, general procedure and administration</td>
<td>668</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>2, 2b, 2d, 2k; 2m*; 3b, 25</td>
<td>B &amp; O tax, imposition of privilege tax, processing of food, utility business, financial business, business of generating or producing electric power, definitions, cities, towns or villages restricted from imposing additional tax</td>
<td>699</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>3</td>
<td>Exemptions from B &amp; O tax</td>
<td>708</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>4, 5</td>
<td>Computation of B &amp; O tax, payment, return and remittance by taxpayer</td>
<td>709</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>9, 13, 18; 27*</td>
<td>B &amp; O tax, tax year, receivership or insolvency proceedings, agents for collection of delinquent taxes, procedure and administration</td>
<td>668</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### INDEX

<table>
<thead>
<tr>
<th>CODE AMENDED—(continued):</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch.</td>
<td>Art.</td>
</tr>
<tr>
<td>11</td>
<td>13C</td>
</tr>
<tr>
<td>11</td>
<td>13C</td>
</tr>
<tr>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>11</td>
<td>14A</td>
</tr>
<tr>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td>11</td>
<td>15A</td>
</tr>
<tr>
<td>11</td>
<td>17</td>
</tr>
<tr>
<td>11</td>
<td>17</td>
</tr>
<tr>
<td>11</td>
<td>19</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
</tr>
<tr>
<td>11</td>
<td>21</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
</tr>
<tr>
<td>11</td>
<td>25</td>
</tr>
<tr>
<td>11A</td>
<td>3</td>
</tr>
<tr>
<td>12</td>
<td>1</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Code</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Taxes and other amounts due the state, itemized record of moneys received for deposit, reports to be sent to auditor and director of budget</td>
<td>332</td>
</tr>
<tr>
<td>12</td>
<td>Manner of payment from treasury, payment by deposit in bank account, no check to be drawn on depository having insufficient funds</td>
<td>336</td>
</tr>
<tr>
<td>12</td>
<td>Accounts of treasurer and auditor, accounts of appropriations, exceptional items fund, check-cashing service in treasury</td>
<td>337</td>
</tr>
<tr>
<td>12</td>
<td>Treasurer custodian of securities, charges to companies for care, exchange and substitution, protection and handling thereof</td>
<td>339</td>
</tr>
<tr>
<td>12</td>
<td>State Board of Investments</td>
<td>340</td>
</tr>
<tr>
<td>15</td>
<td>Pay and allowances for members of the National Guard</td>
<td>588</td>
</tr>
<tr>
<td>15</td>
<td>Salary increase for members of the Department of Public Safety</td>
<td>589</td>
</tr>
<tr>
<td>15</td>
<td>Office of Emergency Services created, etc.</td>
<td>278</td>
</tr>
<tr>
<td>15</td>
<td>Committee on Crime, Delinquency and Correction designated state planning agency under federal law</td>
<td>196</td>
</tr>
<tr>
<td>16</td>
<td>Authority of Director of Health to designate representative to serve in his place on certain boards and commissions</td>
<td>300</td>
</tr>
<tr>
<td>16</td>
<td>Issuance of new certificate of birth for alien born children</td>
<td>301</td>
</tr>
<tr>
<td>16</td>
<td>Establishing testing facilities to detect hypothyroidism in newborn infants</td>
<td>302</td>
</tr>
<tr>
<td>16</td>
<td>Establish mobile testing facilities in certain areas of the state to detect high blood pressure, etc.</td>
<td>304</td>
</tr>
<tr>
<td>16</td>
<td>Conduct of the West Virginia Resource Recovery Solid Waste Disposal Authority</td>
<td>305</td>
</tr>
<tr>
<td>17A</td>
<td>Motor vehicle definitions</td>
<td>395</td>
</tr>
<tr>
<td>17A</td>
<td>Expiration of registration and certificates of title, application for and renewal, issuance by sheriff</td>
<td>413</td>
</tr>
<tr>
<td>17A</td>
<td>Classification, registration fees, vehicles exempt from payment thereof</td>
<td>417</td>
</tr>
<tr>
<td>17B</td>
<td>Nonresident Violator Compact</td>
<td>423</td>
</tr>
<tr>
<td>17B</td>
<td>Surrender of license from other state prior to issuance of license in this state</td>
<td>432</td>
</tr>
<tr>
<td>17B</td>
<td>Applicant for operator’s or chauffeur’s license to state prior revocation or suspension</td>
<td>433</td>
</tr>
<tr>
<td>17C</td>
<td>Motor-driven cycle, moped and bicycle defined</td>
<td>400</td>
</tr>
<tr>
<td>17C</td>
<td>Operating and safety equipment standards</td>
<td>401</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## INDEX

**CODE AMENDED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Extending period for use of studded tires</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>17C</td>
<td>15</td>
<td>37</td>
<td></td>
<td>435</td>
</tr>
<tr>
<td>17D</td>
<td>3</td>
<td>1</td>
<td>Amount of damage which must be reported</td>
<td>436</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>to Department of Motor Vehicles</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>5</td>
<td>17*</td>
<td>Screen testing of school children for</td>
<td>207</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>vision and hearing impairment</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>7A</td>
<td>5, 17</td>
<td>Increasing membership of the State</td>
<td>208</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Teachers Retirement Board</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>9</td>
<td>6a*</td>
<td>Treasurer of county board of education</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>authorized to make funds available to</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>state board of investments</td>
<td>351</td>
</tr>
<tr>
<td>18</td>
<td>20</td>
<td>1, 4, 5, 6</td>
<td>Education of exceptional children</td>
<td>213</td>
</tr>
<tr>
<td>18</td>
<td>26</td>
<td>5, 9a, 9b</td>
<td>Terms of members, vacancies, advisory</td>
<td>218</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>councils, etc., Board of Regents</td>
<td></td>
</tr>
<tr>
<td>18A</td>
<td>4</td>
<td>2a</td>
<td>Supplemental salaries for public school</td>
<td>222</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>teachers</td>
<td></td>
</tr>
<tr>
<td>18A</td>
<td>4</td>
<td>8; 8a*</td>
<td>Increasing salaries of school service</td>
<td>224</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>and auxiliary personnel</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>23</td>
<td>12</td>
<td>License tax on horse and dog racetracks</td>
<td>306</td>
</tr>
<tr>
<td>20</td>
<td>1</td>
<td>7</td>
<td>Digging season of native, wild ginseng</td>
<td>463</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>11</td>
<td>Sale of pelt of game or furbearing</td>
<td>469</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>animals</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>22</td>
<td>Reporting of deer or wild turkey kills</td>
<td>471</td>
</tr>
<tr>
<td>20</td>
<td>2</td>
<td>36a*</td>
<td>Penalties for hunting or fishing after</td>
<td>472</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>revocation of license</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>4</td>
<td>11</td>
<td>Penalties for littering</td>
<td>473</td>
</tr>
<tr>
<td>20</td>
<td>5A</td>
<td>1, 2, 3, 3a, 5, 6, 7, 8, 10, 12, 15, 16,</td>
<td>23a*</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>17, 19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>6</td>
<td></td>
<td>Water Pollution Control Act</td>
<td>476</td>
</tr>
<tr>
<td>20</td>
<td>6A</td>
<td>2*</td>
<td>Implementing federal surface mining</td>
<td>387</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>standards, rule-making authority</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>of director and reclamation commission</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>7</td>
<td>1a*</td>
<td>Prohibiting mining in the Cranberry</td>
<td>503</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Wilderness Study Area</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>7</td>
<td>2</td>
<td>Excluding conservation officers from</td>
<td>504</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>coverage of wage and hour law,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>providing supplemental pay</td>
<td></td>
</tr>
<tr>
<td>21A</td>
<td>1</td>
<td>1, 3</td>
<td>Qualifications of conservation officers</td>
<td>505</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Department of Employment Security</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>purpose of chapter, definitions</td>
<td>725</td>
</tr>
<tr>
<td>21A</td>
<td>5</td>
<td>3b*, 3c*; 5, 7; 20*</td>
<td>Employer coverage and responsibility,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>financing benefits paid to employees of</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>governmental entities, method, rate of</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>contribution, accounts, qualifying</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>wages, etc.</td>
<td>746</td>
</tr>
<tr>
<td>21A</td>
<td>6</td>
<td>3, 10, 15</td>
<td>Empl-yee eligibility, benefits,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>disqualification, rate, payments for</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>service with nonprofit organizations, etc.</td>
<td>751</td>
</tr>
<tr>
<td>21A</td>
<td>6A</td>
<td>1</td>
<td>Extended benefits program, definitions</td>
<td>764</td>
</tr>
<tr>
<td>21A</td>
<td>7</td>
<td>8</td>
<td>Claim procedure, appeal from deputy's</td>
<td>768</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>decision</td>
<td></td>
</tr>
<tr>
<td>21A</td>
<td>11*</td>
<td></td>
<td>Limitations on certain provisions</td>
<td>769</td>
</tr>
<tr>
<td>22</td>
<td>4</td>
<td>1, 1k, 2, 2a, 2b, 3; 3b*, 3c*; 4, 5, 9, 10, 11</td>
<td>Oil and gas wells</td>
<td>508</td>
</tr>
<tr>
<td></td>
<td>4B*</td>
<td></td>
<td>Shallow gas well review board</td>
<td>540</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
## Index

**CODE AMENDED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>4</td>
<td>1c, 5, 6, 6a; 7*; 8c, 10, 16</td>
<td>783</td>
</tr>
</tbody>
</table>

Disability and death benefits, payment directly to claimant, benefits for first three days after injury, classification, mode of payment for occupational pneumoconiosis, release of medical information to employer, occupational pneumoconiosis board, classification of death benefits, commissioner's jurisdiction over case continuous.

| 23  | 4A   | 1, 2 | 799 |

Disabled workmen's relief fund created, to whom benefits paid.

| 23  | 5A*  | 1a* | 800 |

Discriminating practices prohibited.

| 24  | 1    | 9, 12 | 592 |

Authority of Public Service Commission to enter and inspect railroad property.

| 27  | 3    | 2* | 362 |

Mental health facility and likely to cause serious harm defined.

| 27  | 4    | 2* | 363 |

Authorization of disclosure of confidential information.

| 27  | 4    | 4* | 363 |

Admission and treatment of voluntary patients.

| 27  | 5    | 1, 2; 2a*; 3, 4, 6, 8 | 364 |

Involuntary hospitalization.

| 27  | 11   | 1 | 381 |

Committee, disposition of property.

| 28  | 5    | 31 | 383 |

Mentally diseased convicts, treatment, transfer between facilities, penal facility procedures.

| 29  | 1F   | 1; 5* | 286 |

Wheeling Creek Watershed protection and flood prevention district compact, disposal of real and personal property.

| 29  | 3    | 11, 12; 12a* | 770 |

Appointment of State Fire Marshal, qualifications, responsibility of insurance companies in loss investigations, etc.

| 29  | 19   | 2 | 106 |

Definitions, Solicitation of Charitable Funds Act.

| 30  | 1    | 8 | 569 |

Revocation of pharmacist's license upon conviction or guilty plea to a felony.

| 30  | 5    | 12; 12b*; 22 | 293 |

Substitution of generic drugs for brand name drugs.

| 30  | 28*  | | 571 |

West Virginia Occupational Therapy Practice Act.

| 31A | 2    | 3 | 99 |

Qualifications of Deputy Commissioner of Banking.

| 31A | 2    | 8 | 101 |

Examination fees charged by Department of Banking.

| 31A | 3    | 1 | 102 |

Requirements for banks to have member on Board of Banking and Financial Institutions.

| 31A | 4    | 3 | 104 |

Minimum capital stock of state chartered banking institutions.

| 33  | 6    | 33 | 307 |

Value of motor vehicle for insurance purposes.

| 33  | 6A   | 4 | 308 |

Cancellation or nonrenewal of automobile liability policies.

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Preference among creditors of insolvent insurance companies</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>10</td>
<td>36*</td>
<td>Issuance of conversion policies when group insurance coverage terminates</td>
<td>309</td>
</tr>
<tr>
<td>33</td>
<td>16A*</td>
<td></td>
<td>Landlord and Tenant Act</td>
<td>312</td>
</tr>
<tr>
<td>46A</td>
<td>2</td>
<td>122</td>
<td>Definitions-Consumer Credit and Protection Act</td>
<td>356</td>
</tr>
<tr>
<td>47</td>
<td>6</td>
<td>5b*</td>
<td>Maximum interest rate on real estate loans</td>
<td>149</td>
</tr>
<tr>
<td>47</td>
<td>9</td>
<td>2; 26a*</td>
<td>Uniform Limited Partnership Act</td>
<td>390</td>
</tr>
<tr>
<td>47</td>
<td>18*</td>
<td></td>
<td>Antitrust Act</td>
<td>7</td>
</tr>
<tr>
<td>48</td>
<td>1</td>
<td>6</td>
<td>Application and requirements for issuance of marriage license</td>
<td>204</td>
</tr>
<tr>
<td>48</td>
<td>9</td>
<td>15</td>
<td>Powers of circuit court under reciprocal dependency law</td>
<td>206</td>
</tr>
<tr>
<td>49</td>
<td>1</td>
<td>1-5</td>
<td>Child welfare—purpose and definitions</td>
<td>110</td>
</tr>
<tr>
<td>49</td>
<td>2</td>
<td>13*</td>
<td>Parole of certain children to state department</td>
<td>113</td>
</tr>
<tr>
<td>49</td>
<td>2</td>
<td>17*</td>
<td>Subsidized adoption by Department of Welfare for certain children</td>
<td>140</td>
</tr>
<tr>
<td>49</td>
<td>5</td>
<td></td>
<td>Juvenile proceedings</td>
<td>114</td>
</tr>
<tr>
<td>49</td>
<td>5a</td>
<td>3, 5</td>
<td>Finality of orders of juvenile referee following detention hearing</td>
<td>136</td>
</tr>
<tr>
<td>49</td>
<td>6B*</td>
<td></td>
<td>Special guardian to secure medical treatment for juveniles</td>
<td>136</td>
</tr>
<tr>
<td>49</td>
<td>7</td>
<td>1</td>
<td>Confidentiality of juvenile records</td>
<td>138</td>
</tr>
<tr>
<td>50</td>
<td>1</td>
<td>2, 3, 7, 8, 9; 9a*; 10, 12, 14</td>
<td>Magistrate courts and officers</td>
<td>171</td>
</tr>
<tr>
<td>50</td>
<td>2</td>
<td>1</td>
<td>Jurisdiction of magistrate courts</td>
<td>179</td>
</tr>
<tr>
<td>50</td>
<td>3</td>
<td>4</td>
<td>Magistrate court fund</td>
<td>179</td>
</tr>
<tr>
<td>50</td>
<td>4</td>
<td>1, 5, 7, 8, 9, 10, 12; 13*</td>
<td>Procedure before trial</td>
<td>180</td>
</tr>
<tr>
<td>50</td>
<td>5</td>
<td>2, 3, 4, 5, 6, 8, 9, 11, 12; 14*</td>
<td>Trials, hearings and appeals in magistrate court</td>
<td>186</td>
</tr>
<tr>
<td>50</td>
<td>6</td>
<td>1; 3*</td>
<td>Enforcement of judgments, attachment, actions in magistrate court</td>
<td>190</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1e</td>
<td>Terms of court, fifth judicial circuit</td>
<td>191</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1v</td>
<td>Terms of court, twenty-second judicial circuit</td>
<td>192</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>1y</td>
<td>Terms of court, twenty-fifth judicial circuit</td>
<td>193</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>2</td>
<td>Increasing original amount of jurisdiction of circuit courts</td>
<td>193</td>
</tr>
<tr>
<td>51</td>
<td>2</td>
<td>14*</td>
<td>Permitting holding of circuit court in two or more counties at same time</td>
<td>195</td>
</tr>
<tr>
<td>51</td>
<td>3</td>
<td>10; 13*</td>
<td>Permitting courts to adjourn or fail to sit for up to thirty consecutive days and power of judges to act during vacation of court</td>
<td>195</td>
</tr>
<tr>
<td>52</td>
<td>1</td>
<td></td>
<td>Reappointment of jury commissioners, eligibility, succession</td>
<td>354</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Code Amended—(continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>2</td>
<td>19a</td>
<td>Limitation of actions and suits, collection of taxes due state or any subdivision thereof</td>
</tr>
<tr>
<td>56</td>
<td>3</td>
<td>13a*</td>
<td>Service of process or notice on domestic and foreign limited partnerships</td>
</tr>
<tr>
<td>56</td>
<td>3</td>
<td>25; 33*</td>
<td>Actions by or against nonresident persons having certain contacts with this State</td>
</tr>
<tr>
<td>57</td>
<td>1</td>
<td>7a</td>
<td>Photographic copies of original documents, destruction of originals, methods of destruction of canceled bonds and coupons</td>
</tr>
<tr>
<td>60</td>
<td>3</td>
<td>7</td>
<td>Classification of agencies, etc., Alcohol Beverage Control Commissioner</td>
</tr>
<tr>
<td>60A</td>
<td>2</td>
<td>204, 206, 208, 210</td>
<td>Standards and schedules, Uniform Controlled Substances Act</td>
</tr>
<tr>
<td>61</td>
<td>2</td>
<td>9</td>
<td>Definitions of assault and battery and prescribing penalties</td>
</tr>
<tr>
<td>61</td>
<td>3b*</td>
<td></td>
<td>Making trespass on certain property, structures and conveyances a criminal offense</td>
</tr>
<tr>
<td>61</td>
<td>12</td>
<td>10a*</td>
<td>Payment by State of transportation of bodies for autopsy</td>
</tr>
<tr>
<td>62</td>
<td>13</td>
<td>2</td>
<td>Supervision of offenders committed to state institutions</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Code Amended—(continued):</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>11</td>
<td>21</td>
<td>Inheritance and transfer tax, appeals from assessment</td>
</tr>
<tr>
<td>11</td>
<td>12</td>
<td>8, 11, 13</td>
<td>Business Franchise Registration Certificate Tax, collection by distraint, by civil action, assessment, jeopardy assessment</td>
</tr>
<tr>
<td>11</td>
<td>12A</td>
<td>7, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20</td>
<td>Erroneous computation, assessment when insufficiently returned, jeopardy assessments, notice, appeal, service of notice, lien, creation and release of lien, collection by distraint, payment of taxes due before dissolution, contracts with political subdivisions, all by certain carriers</td>
</tr>
<tr>
<td>11</td>
<td>13</td>
<td>6, 7, 7a, 7b, 8, 8a, 11, 12, 14, 15, 16, 16a, 20, 22, 24</td>
<td>B &amp; O Tax, erroneous computation, assessment when insufficiently returned, jeopardy assessments, notice, appeal, service of notice, payment, lien, payment when person terminates business, prerequisite for issuance of certificate of dissolution to final settlement with state or political subdivision contractor, final settlement with nonresident contractor, collection by distraint, administration by tax commissioner, municipalities authorized to inspect tax returns</td>
</tr>
</tbody>
</table>

* Indicates new chapter, article or section.
### Index

**CODE REPEALED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>14</td>
<td>16</td>
</tr>
</tbody>
</table>

Gasoline and special fuel excise tax, prepaid tax adjustment 714

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>14</td>
<td>17, 18, 20-24, 26-28</td>
</tr>
</tbody>
</table>

Gasoline and special fuel excise tax, assessment when insufficiently returned, jeopardy assessments, notice, petition for reassessment, hearings, appeals, sale or discontinuance of business of taxpayer, notice from commissioner a prerequisite to issuance of certificate of dissolution, collection by distraint, report, forms, secrecy of returns, tax a debt, lien of unpaid tax 621

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>14A</td>
<td>14, 15, 17-25</td>
</tr>
</tbody>
</table>

Motor carrier road tax, assessment when insufficiently returned, jeopardy assessments, notice, petition for reassessment, hearing, appeals, sale or discontinuance of business, notice from commissioner a prerequisite to issuance of certificate of dissolution, collection by distraint, report, forms, secrecy of returns, tax a debt, lien of unpaid tax 621

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>15</td>
<td>18, 18b, 24, 24a, 24b, 24c, 24d, 24e, 24f, 27, 28</td>
</tr>
</tbody>
</table>

Consumers sales tax, when lien attaches, enforcement, receivership, bankruptcy, priority of tax, persons selling or quitting business, assessment and collection when insufficiently returned, jeopardy assessments, notice, petition for reassessment, hearing, appeal, collection by action or suit, injunction, collection by distraint, service of notice, confidential information, rules and regulations of commissioner 621

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>15A</td>
<td>13-17, 24, 25</td>
</tr>
</tbody>
</table>

Use tax, determination by tax commissioner, appeal, service of notice, failure to pay, penalties, assessment, refund, administration of article 621

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>17</td>
<td>8, 13, 14, 15, 16</td>
</tr>
</tbody>
</table>

Cigarette tax, discontinuance of business, secrecy of returns, assessment, assessments as evidence, petition for reassessment, jeopardy assessment, distraint, injunction, hearing, appeals 621

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>19</td>
<td>5a, 5c, 5d, 5e, 5f, 5g, 6, 7</td>
</tr>
</tbody>
</table>

Soft drinks tax, keeping of records, inspections and audits, reports, subpoena duces tecum, assessment when insufficiently returned, jeopardy assessments, notice, petition for reassessment, hearing, appeals, collection by action or suit, rules and regulations, lien for delinquent taxes 621
**CODE REPEALED—(continued):**

<table>
<thead>
<tr>
<th>Ch.</th>
<th>Art.</th>
<th>Sec.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td>21</td>
<td>80-91</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Personal income tax, procedure and administration, general provisions, assessment, deficiency procedure, collection, lien, distraint, overpayments, credits and refunds, limitations on assessment and collection, interest, additions, penalties</td>
<td>621</td>
</tr>
<tr>
<td>11</td>
<td>24</td>
<td>26-37</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Corporation net income tax, procedure and administration, general provisions, assessment, deficiency procedure, collection, lien, distraint, overpayments, credits and refunds, limitations on assessment and collection, interest, additions, penalties</td>
<td>621</td>
</tr>
<tr>
<td>18A</td>
<td>4</td>
<td>2b</td>
<td>222</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Additional salary increase for teachers</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>5A</td>
<td>13</td>
<td>475</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pollution abatement and control, time extensions</td>
<td></td>
</tr>
</tbody>
</table>

**COMPACTS:**

- Motor vehicles
  - Nonresident Violator Compact
    - Ch. 67
    - Page 423
  - Wheeling Creek Watershed Protection and Flood Prevention District Compact
    - Ch. 107
    - Page 770

**CONSUMER CREDIT AND PROTECTION:**

- Definitions
  - Ch. 18
  - Page 149

**CONSUMERS SALES TAX:**

See Taxation.

**CONTROLLED SUBSTANCES:**

See Narcotics.

**CORPORATION NET INCOME TAX:**

See Taxation.

**COUNTY COMMISSIONS:**

- Building and housing codes
  - Authority of county commissions to adopt
    - Page 20
    - Page 162
  - Population requirements
    - Ch. 20
    - Page 142
- County Development Authorities
  - Eminent domain
    - Authority to exercise granted
      - Ch. 23
      - Page 167
    - Necessity to exercise determined
      - Ch. 23
      - Page 167
  - County information referral service
    - Ch. 21
    - Page 163
- County or district property
  - Conveyance or demolition
    - Local option election
      - Ch. 22
      - Page 164
    - Petition
      - Ch. 22
      - Page 164
    - Form
      - Ch. 22
      - Page 164

**COUNTY DEVELOPMENT AUTHORITIES:**

- County Development Authorities
  - Eminent domain
    - Authority to exercise granted
      - Ch. 23
      - Page 167
    - Necessity to exercise determined
      - Ch. 23
      - Page 167
### COURTS:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circuit courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Circuit Courts.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Magistrate courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Magistrate courts.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### CRANBERRY WILDERNESS STUDY AREA:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surface mining</td>
<td>81</td>
<td>503</td>
</tr>
<tr>
<td>Limitation on mining in Cranberry wilderness study area</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### CRIME, DELINQUENCY AND CORRECTION:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor's Committee on Crime, Delinquency and Correction</td>
<td>30</td>
<td>196</td>
</tr>
<tr>
<td>Designated state planning agency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Participation in federal programs</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### CRIMES AND OFFENSES:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault</td>
<td>31</td>
<td>197</td>
</tr>
<tr>
<td>Defined</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Autopsy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Autopsy.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Battery</td>
<td>31</td>
<td>198</td>
</tr>
<tr>
<td>Defined</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malicious or unlawful assault</td>
<td>31</td>
<td>197</td>
</tr>
<tr>
<td>Defined</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trespass</td>
<td>31</td>
<td>197</td>
</tr>
<tr>
<td>See Trespass.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### CRIMINAL PROCEDURE:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile Proceedings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Juvenile Proceedings</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DAYLIGHT SAVING TIME:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement</td>
<td>34</td>
<td>204</td>
</tr>
<tr>
<td>Designation as official time</td>
<td>34</td>
<td>203</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF CIVIL AND DEFENSE MOBILIZATION:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department abolished</td>
<td>44</td>
<td>281</td>
</tr>
</tbody>
</table>

### DIABETES:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detection</td>
<td>51</td>
<td>304</td>
</tr>
<tr>
<td>Mobile testing facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program for</td>
<td>51</td>
<td>304</td>
</tr>
<tr>
<td>Established</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DOGS:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Racing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Horse and Dog Racing.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DOMESTIC RELATIONS:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>35</td>
<td>204</td>
</tr>
<tr>
<td>Application for license</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Filing of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Form</td>
<td>35</td>
<td>205</td>
</tr>
<tr>
<td>General Provisions</td>
<td>35</td>
<td>205</td>
</tr>
<tr>
<td>Receipt of</td>
<td>35</td>
<td>206</td>
</tr>
<tr>
<td>License</td>
<td>35</td>
<td>204</td>
</tr>
<tr>
<td>Issuance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exception</td>
<td>35</td>
<td>204</td>
</tr>
</tbody>
</table>
DOMESTIC RELATIONS—(continued):
Revised Uniform Reciprocal Enforcement of Support Act
Obligee
Exempt from payment of filing fee or costs 36 206
Obligor
Fees and costs
Requested by initiating court paid by 36 207
See Adoption.

DRUGS:
Generic drugs
Board of pharmacy
Standards
Promulgation of rules and regulations 47 297
Definitions 47 293
Offenses 47 298, 299
Penalties 47 298, 299
Prescription
Deviation from
Oral 47 293
Written 47 294
Prohibited acts 47 293
Quality
Responsibility for
Exception 47 293
Standards 47 296
Rules and regulations
Promulgation 47 297
Substitution 47 294, 295
Exception 47 294
Pharmacist
Liability 47 298
Physician
Liability 47 298
Prohibited acts 47 295, 297

EDUCATION:
See Schools.

ELECTIONS:
Absentee voting
Ballot
Certification
Penalties for false certification 43 257
Hand delivery 43 257
Restrictions 43 257

Ballots
Challenge by election commissioners
Grounds 43 246
Delivery to poll clerk 43 243
Number required 43 243, 257
Official ballots
Number 43 264
Packaging and sealing 43 243
Printing requirements
Restrictions 43 242, 257
Sample primary ballot 43 263
Publication 43 263
Spoiled 43 265
**ELECTIONS—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biennial checkup</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affidavit</td>
<td>43</td>
<td>252</td>
</tr>
<tr>
<td>County commissions</td>
<td>43</td>
<td>253</td>
</tr>
<tr>
<td>Deadline date</td>
<td>43</td>
<td>252</td>
</tr>
<tr>
<td>Registrars to perform registration records</td>
<td>43</td>
<td>252</td>
</tr>
<tr>
<td>Time for</td>
<td>43</td>
<td>253</td>
</tr>
<tr>
<td>Visitation for registration by county commission clerk or deputy</td>
<td>43</td>
<td>253</td>
</tr>
</tbody>
</table>

**Candidates**

<table>
<thead>
<tr>
<th>Contributions</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation contributions forbidden</td>
<td>43</td>
<td>270</td>
</tr>
<tr>
<td>Exceptions</td>
<td>43</td>
<td>270</td>
</tr>
<tr>
<td>Penalties</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>State election commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional powers and duties</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>Promulgation of rules and regulations</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>Detailed accounts and verified statements required</td>
<td>43</td>
<td>266</td>
</tr>
<tr>
<td>Disqualification</td>
<td>43</td>
<td>249</td>
</tr>
<tr>
<td>Financial agents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detailed accounts</td>
<td>43</td>
<td>266</td>
</tr>
<tr>
<td>Contributions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verified financial statements required</td>
<td>43</td>
<td>266</td>
</tr>
<tr>
<td>Restrictions on plural candidacy</td>
<td>43</td>
<td>248</td>
</tr>
<tr>
<td>Exceptions</td>
<td>43</td>
<td>249</td>
</tr>
<tr>
<td>Statements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contents</td>
<td>43</td>
<td>267</td>
</tr>
<tr>
<td>Filing</td>
<td>43</td>
<td>267</td>
</tr>
<tr>
<td>Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political contributions forbidden</td>
<td>43</td>
<td>270</td>
</tr>
<tr>
<td>Exceptions</td>
<td>43</td>
<td>270</td>
</tr>
<tr>
<td>Unlawful acts</td>
<td>43</td>
<td>277</td>
</tr>
<tr>
<td>Penalties</td>
<td>43</td>
<td>277</td>
</tr>
</tbody>
</table>

**Counties**

| County commissions                                                 |     |      |
| Biennial checkup                                                   | 43  | 253  |
| Clerk to note changes in registration records                      | 43  | 252, 254 |

**Registration of voters**

| Authority                                                           | 43  | 250  |
| Cancellation                                                       | 43  | 249, 253 |
| Delivery to disabled persons                                       | 43  | 254  |
| Form                                                               | 43  | 253  |
| Hours                                                              | 43  | 250, 254 |
| Name changes                                                       | 43  | 255  |
| Reinstatement                                                      | 43  | 250  |
| Review                                                             | 43  | 249, 254 |
| System established                                                 | 43  | 249  |
| Temporary offices established                                       | 43  | 253  |
| Advertising by clerk of county commission                          | 43  | 254  |
| Time limit                                                         | 43  | 255  |
| Transfer                                                           | 43  | 255  |
| Form                                                               | 43  | 255  |

**County executive committees**

| Composition                                                        | 43  | 240  |
| Districts                                                          | 43  | 241  |
| Composition                                                        | 43  | 241  |
| Created by county commissions                                      | 43  | 241  |
## Index

**ELECTIONS—(continued):**

### County executive committees—(continued):

#### Members
- **Election** ........................................ 43 | 240
- **Requirements** .................................... 43 | 241
- **Terms** ........................................... 43 | 241
- **Commencement** .................................. 43 | 241

#### Officers
- **Selection** ........................................ 43 | 242
- **Vacancies** ........................................ 43 | 244

#### Executive committee districts
- **Composition** ...................................... 43 | 241
- **Created by county commissions** ................ 43 | 241

#### General elections
- **Voting procedures** ................................
  - **Mixed ticket** .................................... 43 | 264
  - **Straight ticket** .................................. 43 | 264
- **House-to-house canvass** ............................ 43 | 252
- **Affidavit** .......................................... 43 | 252
- **Deadline** ........................................... 43 | 252
- **Registrars to perform** .............................. 43 | 252
- **Registration records** ............................... 43 | 252

#### Offenses
- **Prosecution** ....................................... 43 | 277
- **Limitation** ....................................... 43 | 277

#### Polls
- **Closing procedures** ................................ 43 | 243
- **Opening procedures** ................................ 43 | 243

#### Primary elections
- **Candidates**
  - **Announcement of candidacy** ...................... 43 | 260
  - **Certificates**
    - **Contents** ....................................... 43 | 262
    - **Certification** ................................... 43 | 261
    - **By Secretary of State** ......................... 43 | 262
    - **False information** ............................. 43 | 262
    - **Penalty** ......................................... 43 | 262
    - **Form** ............................................ 43 | 261

#### County boards of education
- **Election of members** ............................... 43 | 259
- **Ballot** ............................................ 43 | 259
- **Date** ............................................... 43 | 259
- **General provisions** ................................ 43 | 259

#### Registrars
- **Appointment** ...................................... 43 | 250
- **Eligibility** ....................................... 43 | 251
- **Biennial checkup** .................................. 43 | 252, 253
- **Compensation** ..................................... 43 | 253
- **House-to-house canvass** ............................ 43 | 252
- **Instruction** ........................................ 43 | 251
- **List** ................................................ 43 | 251
- **Number** ............................................ 43 | 251
- **Oath** ................................................ 43 | 251
- **Vacancy** ............................................ 43 | 251

#### Registration records
- **Changes noted by clerk of county commission** .... 43 | 252, 254
- **Method** ............................................. 43 | 252, 254
<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale or demolition of real property</td>
<td>22</td>
<td>163</td>
</tr>
<tr>
<td><strong>Special elections</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Voting procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mixed ticket</td>
<td>43</td>
<td>264</td>
</tr>
<tr>
<td>Straight ticket</td>
<td>43</td>
<td>264</td>
</tr>
<tr>
<td>Time and place of holding</td>
<td>43</td>
<td>259</td>
</tr>
<tr>
<td>Hours polls open</td>
<td>43</td>
<td>259</td>
</tr>
<tr>
<td><strong>State election commission</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional powers and duties</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>Assistance of Attorney General</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>Investigation</td>
<td>43</td>
<td>274</td>
</tr>
<tr>
<td>Disclosure forbidden</td>
<td>43</td>
<td>274</td>
</tr>
<tr>
<td>Penalties</td>
<td>43</td>
<td>274</td>
</tr>
<tr>
<td>Oaths</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td>Promulgation of rules and regulations</td>
<td>43</td>
<td>273</td>
</tr>
<tr>
<td><strong>State executive committees</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional members</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td>Appointment</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td>Composition</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td>Members</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td>Election</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td>Requirements</td>
<td>43</td>
<td>240</td>
</tr>
<tr>
<td><strong>Officers</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Selection</td>
<td>43</td>
<td>242</td>
</tr>
<tr>
<td>Vacancies</td>
<td>43</td>
<td>241</td>
</tr>
<tr>
<td><strong>Voters</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Absentee</td>
<td>43</td>
<td>256</td>
</tr>
<tr>
<td>Delivery of ballot</td>
<td>43</td>
<td>256</td>
</tr>
<tr>
<td>Assistance in voting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>43</td>
<td>248</td>
</tr>
<tr>
<td>Qualifications for</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance to</td>
<td>43</td>
<td>245</td>
</tr>
<tr>
<td>Affidavits</td>
<td>43</td>
<td>246</td>
</tr>
<tr>
<td>False</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>43</td>
<td>248</td>
</tr>
<tr>
<td>List</td>
<td>43</td>
<td>247</td>
</tr>
<tr>
<td><strong>Physical disability</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>43</td>
<td>248</td>
</tr>
<tr>
<td><strong>Registration</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of county commissions</td>
<td>43</td>
<td>250</td>
</tr>
<tr>
<td>Cancellation</td>
<td>43</td>
<td>249, 253</td>
</tr>
<tr>
<td>Form</td>
<td>43</td>
<td>253</td>
</tr>
<tr>
<td>Delivery to disabled persons</td>
<td>43</td>
<td>254</td>
</tr>
<tr>
<td>Hours</td>
<td>43</td>
<td>250, 254</td>
</tr>
<tr>
<td>Name changes</td>
<td>43</td>
<td>256</td>
</tr>
<tr>
<td>Reinstatement</td>
<td>43</td>
<td>250</td>
</tr>
<tr>
<td>Review</td>
<td>43</td>
<td>249, 254</td>
</tr>
<tr>
<td>System established</td>
<td>43</td>
<td>249</td>
</tr>
<tr>
<td>Temporary offices established</td>
<td>43</td>
<td>253</td>
</tr>
<tr>
<td>Advertising by clerk of county commission</td>
<td>43</td>
<td>254</td>
</tr>
<tr>
<td>Time limit</td>
<td>43</td>
<td>255</td>
</tr>
<tr>
<td>Transfer</td>
<td>43</td>
<td>255</td>
</tr>
<tr>
<td>Form</td>
<td>43</td>
<td>255</td>
</tr>
<tr>
<td>Visitation by county commission clerk or deputy</td>
<td>43</td>
<td>253</td>
</tr>
<tr>
<td><strong>Votes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buying or selling votes unlawful</td>
<td>43</td>
<td>276</td>
</tr>
<tr>
<td>Penalties</td>
<td>43</td>
<td>277</td>
</tr>
<tr>
<td>ELECTIONS—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Voting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acts forbidden</td>
<td>43</td>
<td>274</td>
</tr>
<tr>
<td>Penalties</td>
<td>43</td>
<td>276</td>
</tr>
<tr>
<td>Procedures generally</td>
<td>43</td>
<td>244</td>
</tr>
<tr>
<td>Records</td>
<td>43</td>
<td>248</td>
</tr>
<tr>
<td>Voting machines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ballots or ballot labels</td>
<td>43</td>
<td>257</td>
</tr>
<tr>
<td>Arrangement</td>
<td>43</td>
<td>257</td>
</tr>
<tr>
<td>General provisions</td>
<td>43</td>
<td>257</td>
</tr>
<tr>
<td>Number printed</td>
<td>43</td>
<td>257</td>
</tr>
<tr>
<td>Sample ballots</td>
<td>43</td>
<td>258</td>
</tr>
<tr>
<td>Write-in ballots</td>
<td>43</td>
<td>258</td>
</tr>
<tr>
<td>Instruction cards and diagrams</td>
<td>43</td>
<td>258</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMERGENCY PLANNING:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Office abolished</td>
<td>44</td>
<td>281</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMERGENCY SERVICES:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chairman</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Created</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Members</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Appointment</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Compensation</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Number</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Reimbursement</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Civil and defense mobilization</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Department abolished</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Emergency planning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office abolished</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Governor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Powers and duties</td>
<td>44</td>
<td>281</td>
</tr>
<tr>
<td>Office of emergency services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>44</td>
<td>280</td>
</tr>
<tr>
<td>Director</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>44</td>
<td>280</td>
</tr>
<tr>
<td>Authority</td>
<td>44</td>
<td>280</td>
</tr>
<tr>
<td>Staffing</td>
<td>44</td>
<td>280</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FINANCE AND ADMINISTRATION:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>State-owned property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking</td>
<td>45</td>
<td>283</td>
</tr>
<tr>
<td>Regulation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exceptions</td>
<td>45</td>
<td>284</td>
</tr>
<tr>
<td>Violations</td>
<td>45</td>
<td>285</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FIRE MARSHAL:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>See Fire Prevention and Control.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FIREMEN'S AND POLICEMEN'S PENSIONS:</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>74</td>
<td>460</td>
</tr>
<tr>
<td>Death benefits, general provisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actuarial study</td>
<td>74</td>
<td>459</td>
</tr>
<tr>
<td>Investment</td>
<td>74</td>
<td>458</td>
</tr>
<tr>
<td>Levy to maintain</td>
<td>74</td>
<td>456</td>
</tr>
<tr>
<td>Report</td>
<td>74</td>
<td>460</td>
</tr>
</tbody>
</table>
## INDEX

### FIREMEN'S AND POLICEMEN'S PENSIONS—(continued):

<table>
<thead>
<tr>
<th>Police and fire departments, paid</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment of members</td>
<td>74</td>
<td>457</td>
</tr>
<tr>
<td>Amount</td>
<td>74</td>
<td>457</td>
</tr>
<tr>
<td>Members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment</td>
<td>74</td>
<td>457</td>
</tr>
<tr>
<td>Amount</td>
<td>74</td>
<td>457</td>
</tr>
<tr>
<td>Removal or discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Refund of deductions</td>
<td>74</td>
<td>457</td>
</tr>
</tbody>
</table>

### FIRE PREVENTION AND CONTROL:

| Insurance | | |
| Report of losses by insurance companies | 46 | 290 |
| Release of information | 46 | 291 |
| State fire marshal | | |
| Appointment | 46 | 286 |
| Arrest, powers | 46 | 288 |
| Clerks, employment | 46 | 286 |
| Enforcement of laws | | |
| Powers and duties of marshal | 46 | 287 |
| Examinations | | |
| Written report | 46 | 290 |
| Fire departments | | |
| Deputizing members | 46 | 290 |
| Inspections, powers and duties | 46 | 287 |
| Insurance | | |
| Report of losses by insurance companies | 46 | 290 |
| Release of information | 46 | 291 |
| Investigations, powers and duties | 46 | 288 |
| Licenses, issuance | 46 | 290 |
| Oaths, administering | 46 | 289 |
| Right of entry | 46 | 288 |
| Witnesses, summoning | 46 | 289 |

### FLOOD CONTROL:

Resolution petitioning Congress to enact legislation and appropriate funds for construction of dams and flood control projects in southern West Virginia _____________ 816

### FREEDOM OF INFORMATION:

See Open Governmental Proceedings.

### GAME AND FISH:

See Natural Resources.

### GASOLINE AND SPECIAL FUEL EXCISE TAX:

See Taxation.

### GINSENG:

See Natural Resources.

### GOVERNOR:

See Crime, Delinquency and Correction.

### HEALTH:

<table>
<thead>
<tr>
<th>Alien born children</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth certificates</td>
<td>49</td>
<td>301</td>
</tr>
<tr>
<td>Boards and commissions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Representative</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Designation by state director</td>
<td>48</td>
<td>300</td>
</tr>
<tr>
<td>Exceptions</td>
<td>48</td>
<td>300</td>
</tr>
</tbody>
</table>
**HEALTH—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diabetes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Diabetes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generic drugs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Drugs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>High blood pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See High Blood Pressure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Newborn children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Phenylketonuria and hypothyroidism</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilities established</td>
<td>50</td>
<td>303</td>
</tr>
<tr>
<td>Program established</td>
<td>50</td>
<td>302</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>50</td>
<td>302</td>
</tr>
<tr>
<td>State department of health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance to newborn children</td>
<td>50</td>
<td>303</td>
</tr>
<tr>
<td>Tests</td>
<td>50</td>
<td>303</td>
</tr>
<tr>
<td>Reports</td>
<td>50</td>
<td>303</td>
</tr>
<tr>
<td>Violations of provisions of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalties</td>
<td>50</td>
<td>303</td>
</tr>
<tr>
<td>Resource Recovery—Solid Waste Disposal Authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conduct of proceedings</td>
<td>52</td>
<td>305</td>
</tr>
<tr>
<td>Tuberculosis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Tuberculosis</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**HIGH BLOOD PRESSURE:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mobile testing facilities</td>
<td>51</td>
<td>304</td>
</tr>
<tr>
<td>Program for</td>
<td>51</td>
<td>304</td>
</tr>
<tr>
<td>Established</td>
<td>51</td>
<td>304</td>
</tr>
</tbody>
</table>

**HORSE AND DOG RACING:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Horse and dog racetracks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>License tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In lieu of all other license, etc., taxes</td>
<td>53</td>
<td>306</td>
</tr>
<tr>
<td>Exception</td>
<td>53</td>
<td>306</td>
</tr>
</tbody>
</table>

**HYPOTHYROIDISM:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Health</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**INHERITANCE AND TRANSFER TAX:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>See Taxation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**INSURANCE:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group coverage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conversion from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General provisions</td>
<td>57</td>
<td>312</td>
</tr>
<tr>
<td>Right of insured</td>
<td>57</td>
<td>312</td>
</tr>
<tr>
<td>Exception</td>
<td>57</td>
<td>312</td>
</tr>
<tr>
<td>Insurance companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposal to disburse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application</td>
<td>56</td>
<td>310</td>
</tr>
<tr>
<td>Notice</td>
<td>56</td>
<td>311</td>
</tr>
<tr>
<td>Provisions</td>
<td>56</td>
<td>310</td>
</tr>
<tr>
<td>Time limit</td>
<td>56</td>
<td>309</td>
</tr>
<tr>
<td>West Virginia insurance guaranty association</td>
<td>56</td>
<td>310</td>
</tr>
<tr>
<td>Insurers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claims</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred creditors</td>
<td>56</td>
<td>309</td>
</tr>
<tr>
<td>Information inquiries</td>
<td>56</td>
<td>314</td>
</tr>
</tbody>
</table>
**INDEX**

<table>
<thead>
<tr>
<th>INSURANCE—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor vehicles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Value, motor vehicles involved in claim</td>
<td>54</td>
<td>307</td>
</tr>
<tr>
<td>Policies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Converted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditions for issuance</td>
<td>57</td>
<td>312</td>
</tr>
<tr>
<td>Coverage</td>
<td>57</td>
<td>313</td>
</tr>
<tr>
<td>Additional</td>
<td>57</td>
<td>317</td>
</tr>
<tr>
<td>Alternate plans</td>
<td>57</td>
<td>315</td>
</tr>
<tr>
<td>Benefit levels</td>
<td>57</td>
<td>320</td>
</tr>
<tr>
<td>Combined plans</td>
<td>57</td>
<td>319</td>
</tr>
<tr>
<td>Dependents</td>
<td>57</td>
<td>313</td>
</tr>
<tr>
<td>Following retirement</td>
<td>57</td>
<td>319</td>
</tr>
<tr>
<td>Limits</td>
<td>57</td>
<td>315</td>
</tr>
<tr>
<td>Persons for whom not required</td>
<td>57</td>
<td>314</td>
</tr>
<tr>
<td>Effective date</td>
<td>57</td>
<td>313</td>
</tr>
<tr>
<td>Preexisting conditions</td>
<td>57</td>
<td>315</td>
</tr>
<tr>
<td>Reduction of benefits</td>
<td>57</td>
<td>315</td>
</tr>
<tr>
<td>Refusal to renew converted policy</td>
<td>57</td>
<td>314</td>
</tr>
<tr>
<td>Liability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cancellation of</td>
<td>55</td>
<td>308</td>
</tr>
<tr>
<td>Nonrenewal</td>
<td>55</td>
<td>308</td>
</tr>
<tr>
<td>Advance notice</td>
<td>55</td>
<td>308</td>
</tr>
</tbody>
</table>

**INTERSTATE ARBITRATION OF INHERITANCE AND DEATH TAXES:**

See Taxation.

**INTERSTATE COMPROMISE OF INHERITANCE AND DEATH TAXES:**

See Taxation.

**INVESTMENTS:**

<table>
<thead>
<tr>
<th>Agencies and boards, state</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal status continued</td>
<td>58</td>
<td>344</td>
</tr>
<tr>
<td>Definitions</td>
<td>58</td>
<td>341</td>
</tr>
<tr>
<td>Deposits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest earning deposits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apportionment of interest among depositories</td>
<td>58</td>
<td>348</td>
</tr>
<tr>
<td>Interest rate</td>
<td>58</td>
<td>348</td>
</tr>
<tr>
<td>Exceptional items fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>58</td>
<td>338</td>
</tr>
<tr>
<td>Investment funds established</td>
<td>58</td>
<td>345</td>
</tr>
<tr>
<td>Management</td>
<td>58</td>
<td>345</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>58</td>
<td>326</td>
</tr>
<tr>
<td>Money</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of money from treasury</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By deposit in bank account</td>
<td>58</td>
<td>337</td>
</tr>
<tr>
<td>Authorization</td>
<td>58</td>
<td>337</td>
</tr>
<tr>
<td>Manner</td>
<td>58</td>
<td>336</td>
</tr>
<tr>
<td>Municipal funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allocation of income</td>
<td>58</td>
<td>324</td>
</tr>
<tr>
<td>Investment</td>
<td>58</td>
<td>324</td>
</tr>
<tr>
<td>Permissible investments</td>
<td>58</td>
<td>346</td>
</tr>
<tr>
<td>Policy guidelines</td>
<td>58</td>
<td>349</td>
</tr>
<tr>
<td>Purpose of article</td>
<td>58</td>
<td>341</td>
</tr>
<tr>
<td>Restrictions</td>
<td>58</td>
<td>347</td>
</tr>
<tr>
<td>Severability of provisions of act</td>
<td>58</td>
<td>350</td>
</tr>
</tbody>
</table>
**INVESTMENTS—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>State board of investments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audits</td>
<td>58</td>
<td>350</td>
</tr>
<tr>
<td>Availability of county funds</td>
<td>58</td>
<td>324</td>
</tr>
<tr>
<td>Authority of county treasurer</td>
<td>58</td>
<td>342</td>
</tr>
<tr>
<td>Continued</td>
<td>58</td>
<td>344</td>
</tr>
<tr>
<td>Costs and expenses</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>County board of education treasurer</td>
<td>58</td>
<td>351</td>
</tr>
<tr>
<td>Authority to make funds available</td>
<td>58</td>
<td>326</td>
</tr>
<tr>
<td>Income, allocation</td>
<td>58</td>
<td>326</td>
</tr>
<tr>
<td>Depositories</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts</td>
<td>58</td>
<td>331, 337</td>
</tr>
<tr>
<td>Treasurer to keep</td>
<td>58</td>
<td>331</td>
</tr>
<tr>
<td>Bond</td>
<td>58</td>
<td>328</td>
</tr>
<tr>
<td>Designation</td>
<td>58</td>
<td>326</td>
</tr>
<tr>
<td>Ineligibility</td>
<td>58</td>
<td>330</td>
</tr>
<tr>
<td>Discontinuance</td>
<td>58</td>
<td>331</td>
</tr>
<tr>
<td>Insufficient funds</td>
<td>58</td>
<td>337</td>
</tr>
<tr>
<td>Reports</td>
<td>58</td>
<td>331</td>
</tr>
<tr>
<td>Requirements</td>
<td>58</td>
<td>326</td>
</tr>
<tr>
<td>Selection</td>
<td>58</td>
<td>327</td>
</tr>
<tr>
<td>Promulgation of rules and regulations</td>
<td>58</td>
<td>327</td>
</tr>
<tr>
<td>Unlawful acceptance of deposits</td>
<td>58</td>
<td>330</td>
</tr>
<tr>
<td>Deposits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount</td>
<td>58</td>
<td>329</td>
</tr>
<tr>
<td>Apportionment</td>
<td>58</td>
<td>327</td>
</tr>
<tr>
<td>By treasurer</td>
<td>58</td>
<td>335</td>
</tr>
<tr>
<td>Report</td>
<td>58</td>
<td>335</td>
</tr>
<tr>
<td>Duty of depositaries</td>
<td>58</td>
<td>335</td>
</tr>
<tr>
<td>Maintenance</td>
<td>58</td>
<td>327</td>
</tr>
<tr>
<td>Unlawful acceptance</td>
<td>58</td>
<td>330</td>
</tr>
<tr>
<td>Meetings</td>
<td>58</td>
<td>342</td>
</tr>
<tr>
<td>Members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>58</td>
<td>343</td>
</tr>
<tr>
<td>Officers</td>
<td>58</td>
<td>342</td>
</tr>
<tr>
<td>Permissible investments</td>
<td>58</td>
<td>346</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>58</td>
<td>343</td>
</tr>
<tr>
<td>Promulgation of rules and regulations</td>
<td>58</td>
<td>330</td>
</tr>
<tr>
<td>Reports</td>
<td>58</td>
<td>350</td>
</tr>
<tr>
<td>State records, papers or documents</td>
<td>58</td>
<td>350</td>
</tr>
<tr>
<td>Destruction of originals</td>
<td>58</td>
<td></td>
</tr>
<tr>
<td>Methods</td>
<td>58</td>
<td>351</td>
</tr>
<tr>
<td>Photographs, microphotographs, reproductions</td>
<td>58</td>
<td>352, 353</td>
</tr>
<tr>
<td>Taxes and amount due the state, subdivisions, etc.</td>
<td>58</td>
<td>351</td>
</tr>
<tr>
<td>Credit to state fund</td>
<td>58</td>
<td>333</td>
</tr>
<tr>
<td>Exceptions</td>
<td>58</td>
<td>334</td>
</tr>
<tr>
<td>Deposits</td>
<td>58</td>
<td>333</td>
</tr>
<tr>
<td>Record</td>
<td>58</td>
<td>333</td>
</tr>
<tr>
<td>Rules and regulations, promulgation</td>
<td>58</td>
<td>333</td>
</tr>
<tr>
<td>How paid</td>
<td>58</td>
<td>333</td>
</tr>
<tr>
<td>To whom paid</td>
<td>58</td>
<td>333</td>
</tr>
<tr>
<td>Transfer of funds</td>
<td>58</td>
<td>330</td>
</tr>
<tr>
<td>Requirements</td>
<td>58</td>
<td>331</td>
</tr>
<tr>
<td>Treasurer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Board of investments</td>
<td>58</td>
<td>332</td>
</tr>
<tr>
<td>Availability of funds</td>
<td>58</td>
<td>339</td>
</tr>
<tr>
<td>Cash funds in office</td>
<td>58</td>
<td>339</td>
</tr>
<tr>
<td>Check cashing service</td>
<td>58</td>
<td>339</td>
</tr>
</tbody>
</table>
### INVESTMENTS—(continued):
- Treasurer—(continued):  
  - Custodian of securities 58 339
  - Funds  
    - Transfer 58 330
    - Out of state 58 332
  - Securities  
    - Protection 58 340

### JEFFERSON COUNTY:
- County commission  
  - Authorized to convey land to Jefferson County Fair Association, Inc. 109 801

### JOINT COMMITTEE ON GOVERNMENT AND FINANCE:
- Resolution directing continuation of certain studies by 818
- Resolution directing Joint Committee on Government and Finance to study requirements necessary for State adoption and implementation of provisions of Federal Surface Mining Control and Reclamation Act of 1977 817

### JURIES:
- Petit juries  
  - Commissioners 59 354
  - Appointment 59 354
  - Compensation 59 355
  - Duties generally 59 355
  - Oath 59 354
  - Qualifications 59 354
  - Removal from office 59 355
  - Succession, eligibility 59 354
  - Term 59 355

### JUVENILE PROCEEDINGS:
- Circuit courts  
  - Jurisdiction 14 114
  - Proceedings  
    - Manner by which child brought before court 14 117
  - Committing children to jail and detention facilities 14 131
- Guardian  
  - Appointment of special guardian to secure medical treatment 14 137
  - Petition for 14 137
  - Notice 14 137
  - Discharge 14 137
  - Immunity from civil liability 14 137
- Juvenile facilities  
  - Panel to visit, inspect, etc. 14 134
  - Reports 14 134
  - Rules and regulations governing 14 132
- Magistrate courts  
  - Jurisdiction 14 116

### Municipal courts:
- Concurrent with circuit court 14 116

### Petition for disposition of certain delinquents  
- Adjudication 14 126
- Answer 14 119
- Contents of petition 14 119
- Form of petition 14 118
## JUVENILE PROCEEDINGS—(continued):

<table>
<thead>
<tr>
<th>Disposition</th>
<th>14</th>
<th>127</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal</td>
<td>14</td>
<td>129</td>
</tr>
<tr>
<td>Modification of dispositional order</td>
<td>14</td>
<td>130</td>
</tr>
<tr>
<td>General provisions</td>
<td>14</td>
<td>118</td>
</tr>
<tr>
<td>Notice to child and parents</td>
<td>14</td>
<td>119</td>
</tr>
<tr>
<td>Praying that child be adjudged neglected or delinquent</td>
<td>14</td>
<td>117</td>
</tr>
<tr>
<td>Service</td>
<td>14</td>
<td>119</td>
</tr>
<tr>
<td>By publication</td>
<td>14</td>
<td>119</td>
</tr>
<tr>
<td>Subpoena</td>
<td>14</td>
<td>119</td>
</tr>
<tr>
<td>Taking child into custody</td>
<td>14</td>
<td>120</td>
</tr>
<tr>
<td>Detention hearing</td>
<td>14</td>
<td>120</td>
</tr>
<tr>
<td>Preliminary hearing</td>
<td>14</td>
<td>122</td>
</tr>
<tr>
<td>Improvement period</td>
<td>14</td>
<td>123</td>
</tr>
<tr>
<td>Right to counsel</td>
<td>14</td>
<td>123</td>
</tr>
<tr>
<td>Procedure generally</td>
<td>14</td>
<td>120</td>
</tr>
<tr>
<td>Release</td>
<td>14</td>
<td>121</td>
</tr>
<tr>
<td>Bail</td>
<td>14</td>
<td>122</td>
</tr>
<tr>
<td>Right to counsel</td>
<td>14</td>
<td>121</td>
</tr>
<tr>
<td>Transfer of jurisdiction</td>
<td>14</td>
<td>124</td>
</tr>
<tr>
<td>Probation officers</td>
<td>14</td>
<td>130</td>
</tr>
<tr>
<td>Counseling by</td>
<td>14</td>
<td>118</td>
</tr>
<tr>
<td>Designation</td>
<td>14</td>
<td>130</td>
</tr>
<tr>
<td>Duties</td>
<td>14</td>
<td>130, 131</td>
</tr>
<tr>
<td>Powers of court</td>
<td>14</td>
<td>131</td>
</tr>
<tr>
<td>Probationers and parolees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Final determination regarding release of</td>
<td>14</td>
<td>139</td>
</tr>
<tr>
<td>Supervision of</td>
<td>14</td>
<td>139</td>
</tr>
<tr>
<td>Prosecuting Attorney to represent petitioner</td>
<td>14</td>
<td>127</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidentiality of</td>
<td>14</td>
<td>138</td>
</tr>
<tr>
<td>Expungement of records</td>
<td>14</td>
<td>134</td>
</tr>
<tr>
<td>General provisions</td>
<td>14</td>
<td>138</td>
</tr>
<tr>
<td>Referees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Further detention in other counties directed by</td>
<td>14</td>
<td>136</td>
</tr>
<tr>
<td>Orders of juvenile referee or judge following detention hearing</td>
<td>14</td>
<td>136</td>
</tr>
<tr>
<td>Finality of</td>
<td>14</td>
<td>136</td>
</tr>
<tr>
<td>Force and effect of</td>
<td>14</td>
<td>136</td>
</tr>
</tbody>
</table>

## LANDLORD AND TENANT ACT:

| Landlord | Duties | 60 | 356 |

## LEGISLATURE:

| Legislative Commission on Pensions and Retirement | | | |
| Created | 61 | 358 |
| Defined | 61 | 358 |
| Meetings | 61 | 360 |
| Members | | | |
| Appointment | 61 | 359 |
| Terms | 61 | 360 |
| Expenses | 61 | 360 |
| Officers | 61 | 360 |
| Powers and duties | 61 | 359 |
| Staff | 61 | 360 |
| Parking | | | |
| Resolution extending second regular session | 45 | 284 |
## INDEX

**LITTERING:**

<table>
<thead>
<tr>
<th>Penalty</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternate penalty for littering</td>
<td>79</td>
<td>473</td>
</tr>
</tbody>
</table>

**MAGISTRATE COURTS:**

<table>
<thead>
<tr>
<th>Actions in</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attachment applying to</td>
<td>24</td>
<td>191</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Appeals</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>In civil cases</td>
<td>24</td>
<td>189</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chief magistrates</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional duties</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>Administrative responsibility</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>Appointment</td>
<td>24</td>
<td>172</td>
</tr>
<tr>
<td>Authority</td>
<td>24</td>
<td>179</td>
</tr>
<tr>
<td>Compensation</td>
<td>24</td>
<td>172</td>
</tr>
<tr>
<td>How determined</td>
<td>24</td>
<td>172</td>
</tr>
<tr>
<td>Conduct of office</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Penalty</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>How determined</td>
<td>24</td>
<td>172</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Circuit court clerk</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>In absence of magistrate court clerk</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>Additional compensation for</td>
<td>24</td>
<td>173</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Civil procedure</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement of civil actions</td>
<td>24</td>
<td>181</td>
</tr>
<tr>
<td>Counterclaim</td>
<td>24</td>
<td>183</td>
</tr>
<tr>
<td>Infant, incompetent or convict</td>
<td>24</td>
<td>186</td>
</tr>
<tr>
<td>Guardian ad litem</td>
<td>24</td>
<td>186</td>
</tr>
<tr>
<td>Representative</td>
<td>24</td>
<td>186</td>
</tr>
<tr>
<td>Intercounty institution</td>
<td>24</td>
<td>185</td>
</tr>
<tr>
<td>Judgment before trial</td>
<td>24</td>
<td>184</td>
</tr>
<tr>
<td>Removal of civil action to circuit court</td>
<td>24</td>
<td>183</td>
</tr>
<tr>
<td>Removal of proceedings to another magistrate</td>
<td>24</td>
<td>182</td>
</tr>
<tr>
<td>Return date after service of summons</td>
<td>24</td>
<td>182</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trial date</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to appear</td>
<td>24</td>
<td>182</td>
</tr>
<tr>
<td>Default Judgment</td>
<td>24</td>
<td>182</td>
</tr>
<tr>
<td>Notice to parties</td>
<td>24</td>
<td>182</td>
</tr>
<tr>
<td>Setting</td>
<td>24</td>
<td>182</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contempt of court</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Punishment</td>
<td>24</td>
<td>188</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Costs</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collected in magistrate court</td>
<td>24</td>
<td>180</td>
</tr>
<tr>
<td>When paid into special fund</td>
<td>24</td>
<td>180</td>
</tr>
<tr>
<td>When paid to state</td>
<td>24</td>
<td>180</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Judgments</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement of</td>
<td>24</td>
<td>190</td>
</tr>
<tr>
<td>Entry in criminal case</td>
<td>24</td>
<td>190</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil jurisdiction</td>
<td>24</td>
<td>179</td>
</tr>
<tr>
<td>Limitations</td>
<td>24</td>
<td>179</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Magistrate assistants</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment</td>
<td>24</td>
<td>174</td>
</tr>
<tr>
<td>Authority to administer oaths, etc.</td>
<td>24</td>
<td>179</td>
</tr>
<tr>
<td>Bond</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Compensation</td>
<td>24</td>
<td>175</td>
</tr>
<tr>
<td>How determined</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Conduct of office</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Penalty</td>
<td>24</td>
<td>174</td>
</tr>
<tr>
<td>Duties</td>
<td>24</td>
<td>174</td>
</tr>
</tbody>
</table>
### MAGISTRATE COURTS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrate assistants—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oath</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Qualifications</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Magistrate court clerks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional duties</td>
<td>24</td>
<td>174</td>
</tr>
<tr>
<td>Appointment</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>Authority</td>
<td>24</td>
<td>174, 179</td>
</tr>
<tr>
<td>Bond</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Compensation</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>How determined</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>Conduct of office</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Penalty</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Oath</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Magistrate court deputy clerks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>24</td>
<td>176</td>
</tr>
<tr>
<td>Number</td>
<td>24</td>
<td>176</td>
</tr>
<tr>
<td>Authority</td>
<td>24</td>
<td>176, 179</td>
</tr>
<tr>
<td>Bond</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Compensation</td>
<td>24</td>
<td>176</td>
</tr>
<tr>
<td>Conduct of office</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Prohibited acts</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Penalty</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Duties</td>
<td>24</td>
<td>176</td>
</tr>
<tr>
<td>Oath</td>
<td>24</td>
<td>177</td>
</tr>
<tr>
<td>Qualifications</td>
<td>24</td>
<td>176</td>
</tr>
<tr>
<td>Magistrate court fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>24</td>
<td>180</td>
</tr>
<tr>
<td>General provisions</td>
<td>24</td>
<td>180</td>
</tr>
<tr>
<td>Pleas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>In certain cases</td>
<td>24</td>
<td>190</td>
</tr>
<tr>
<td>Sheriff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bailiff of magistrate court</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Duties</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Service of process</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Authority of sheriff to employ persons for</td>
<td>24</td>
<td>178</td>
</tr>
<tr>
<td>Trial</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuances</td>
<td>24</td>
<td>186</td>
</tr>
<tr>
<td>Criminal cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entitled to trial by jury</td>
<td>24</td>
<td>187</td>
</tr>
<tr>
<td>Right to trial</td>
<td>24</td>
<td>187</td>
</tr>
<tr>
<td>Evidentiary depositions</td>
<td>24</td>
<td>187</td>
</tr>
<tr>
<td>Judgment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entry in criminal case</td>
<td>24</td>
<td>188</td>
</tr>
<tr>
<td>Representative for infants, incompetent or convict</td>
<td>24</td>
<td>186</td>
</tr>
<tr>
<td>Guardian ad litem</td>
<td>24</td>
<td>186</td>
</tr>
</tbody>
</table>

### MARRIAGE:

See Domestic Relations.

### MENTALLY ILL:

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caseworker</td>
<td>62</td>
<td>366</td>
</tr>
<tr>
<td>Defined</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit courts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospitalization upon circuit court order</td>
<td>62</td>
<td>371</td>
</tr>
<tr>
<td>Legal procedure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Involuntary commitment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hearing required by circuit court</td>
<td>62</td>
<td>364</td>
</tr>
</tbody>
</table>
### INDEX

#### MENTALLY ILL—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Circuit courts—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mental hygiene commissioner</td>
<td>62</td>
<td>364</td>
</tr>
<tr>
<td>Appointment</td>
<td>62</td>
<td>364</td>
</tr>
<tr>
<td>Duties</td>
<td>62</td>
<td>369</td>
</tr>
<tr>
<td>Probable cause hearing</td>
<td>62</td>
<td>365</td>
</tr>
<tr>
<td>Qualifications</td>
<td>62</td>
<td>365</td>
</tr>
<tr>
<td>Removal</td>
<td>62</td>
<td>369</td>
</tr>
<tr>
<td>Probable cause hearing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>62</td>
<td>363</td>
</tr>
<tr>
<td>Authority</td>
<td>62</td>
<td>363</td>
</tr>
<tr>
<td>Confidential Information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorization of disclosure</td>
<td>62</td>
<td>363</td>
</tr>
<tr>
<td>Criminal mentally ill persons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counsel</td>
<td>62</td>
<td>381</td>
</tr>
<tr>
<td>Hearing</td>
<td>62</td>
<td>381</td>
</tr>
<tr>
<td>Transfer</td>
<td>62</td>
<td>381</td>
</tr>
<tr>
<td>Application</td>
<td>62</td>
<td>381</td>
</tr>
<tr>
<td>Treatment</td>
<td>62</td>
<td>381</td>
</tr>
<tr>
<td>Custody of alleged mentally ill for medical examination</td>
<td>62</td>
<td>381</td>
</tr>
<tr>
<td>Definitions</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Hospitalization, involuntary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Involuntary commitment</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Hearing</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Interpreter</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Appointment</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Hospitalization, voluntary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patients</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admission</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Statement of rights</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Treatment</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Consent</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>Voluntary patient coordinator</td>
<td>62</td>
<td>382</td>
</tr>
<tr>
<td>MINES AND MINERALS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surface mining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Director, Department of Natural Resources</td>
<td>63</td>
<td>388</td>
</tr>
<tr>
<td>Expanded rule-making authority</td>
<td>63</td>
<td>388</td>
</tr>
<tr>
<td>Expiration date</td>
<td>63</td>
<td>388</td>
</tr>
<tr>
<td>Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance in compliance with federal law</td>
<td>63</td>
<td>387</td>
</tr>
<tr>
<td>Limitation on issuance or renewal of permits in Cranberry wilderness study area</td>
<td>63</td>
<td>503</td>
</tr>
</tbody>
</table>
### MINES AND MINERALS—(continued):

**Surface mining—(continued):**
- Reclamation commission
  - Expanded rule-making authority
  - Expiration date
- Wells
  - Oil and gas
    - Drilling or fracturing wells
      - Notice to coal operators and department of mines
        - 84 514, 519
      - Introduction of liquids or waste into
        - Notice to coal operators and department of mines
        - 84 520

### MONEY AND INTEREST:

**Interest rate**
- Legislative findings
- Monthly maximum interest rate
  - Authority to prescribe
    - Commissioner of banking
    - General provisions
- Real property
  - Mortgages or deeds of trust
    - Loans
      - Maximum Interest rate
        - 64 391

### MOPEDS:

- Brake equipment required
- Certification label required
- Defined
- Lighting equipment required
- Safety equipment standards and requirements

### MORGAN COUNTY:

- County commission
  - Authorized to purchase and finance certain real estate
    - 110 802

### MOTOR CARRIER ROAD TAX:

See Taxation.

### MOTOR VEHICLES:

**Accidents**
- Amount of property damage
- Written reports required
- Bicycle
  - Defined
  - Definitions
- Certificates of title
  - Expiration
  - Extension
- Equipment
  - Brakes
    - Brake equipment required
  - Lights
    - Lighting equipment requirements
    - Multiple-beam road-lighting equipment
      - Requirements generally
      - Stop lights required
      - Time when lighted lamps required
      - Number required or permitted
      - Exceptions
INDEX

MOTOR VEHICLES—(continued):

Equipment—(continued):
- Reflectors required ........................................ 65 402
- Tires
  - Restrictions .................................................. 70 435
  - Rules and regulations ...................................... 70 435
  - Time extension for use of studded tires .................. 70 435

Insurance, liability:
- Cancellation of .............................................. 55 308
- Nonrenewal ................................................... 55 308
- Advance notice ............................................... 55 308

Licenses
- Application .................................................. 69 434
  - Fee .................................................................. 69 434
  - Form ................................................................ 69 434
- Statement as to prior revocation or suspension ............ 69 434

Examination
- Time limit ....................................................... 69 434

Licenses, out-of-state
- Surrender prior to issuance in this state .................... 68 432
- Exception ....................................................... 68 433

Moped
- Brake equipment required .................................... 65 408
- Certification label required .................................. 65 412
- Defined .................................................................. 65 400
- Lighting equipment required .................................. 65 404
- Safety equipment requirements and standards ................ 65 408

Motorcycle
- Brake equipment required .................................... 65 408
- Lighting equipment required .................................. 65 404
- Safety equipment requirements and standards ................ 65 408

Motorcycle safety standards and specifications board
- Chairman ......................................................... 65 410
- Composition ..................................................... 65 410
- Created ............................................................ 65 410
- Meetings .......................................................... 65 410
- Safety standards:
  - Approval or disapproval by commissioner ................. 65 410
  - Authority to issue regulations ............................. 65 410

Motor-driven cycle
- Brake equipment required .................................... 65 408
- Defined .................................................................. 65 400
- Lighting equipment required .................................. 65 404
- Safety equipment requirements and standards ................ 65 408

Nonresident Violator Compact
- Administrator defined ........................................... 67 431
- Amendments ....................................................... 67 430
- Authorization for entry into .................................. 67 423

Compact administrators
- Appointment ..................................................... 67 428
- Board
  - Alternate member ............................................. 67 428
  - Composition ................................................... 67 428
  - Created ......................................................... 67 428
  - Meetings ....................................................... 67 428
  - Officers .......................................................... 67 428
  - Powers and duties ............................................. 67 428
- Construction and severability ................................ 67 430
- Definitions ...................................................... 67 425, 431
- Effective date .................................................. 67 429
MOTOR VEHICLES—(continued):

Nonresident violator compact—(continued):

<table>
<thead>
<tr>
<th>Entry</th>
<th>Method</th>
<th>Other compacts</th>
<th>Exceptions</th>
<th>Findings</th>
<th>Governor authorized to execute</th>
<th>Withdrawal</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Protective helmets and eye protection devices

<table>
<thead>
<tr>
<th>Lists available to public and law-enforcement officers</th>
<th>Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Approval or disapproval by commissioner</td>
</tr>
<tr>
<td></td>
<td>Hearing for noncompliance</td>
</tr>
</tbody>
</table>

Registration

<table>
<thead>
<tr>
<th>Classification of vehicles</th>
<th>Expiration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Extension</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A vehicle registration fees</td>
</tr>
<tr>
<td>Class B, E and K vehicle registration fees</td>
</tr>
<tr>
<td>Class C and L vehicle registration fees</td>
</tr>
<tr>
<td>Class G, H, J, R, S, T, U vehicle registration fees</td>
</tr>
<tr>
<td>Class farm truck registration fee</td>
</tr>
<tr>
<td>Vehicles exempt from payment of registration fees</td>
</tr>
<tr>
<td>Limitation on display of new registration</td>
</tr>
<tr>
<td>Renewal</td>
</tr>
<tr>
<td>Application</td>
</tr>
<tr>
<td>Authority of sheriffs to issue</td>
</tr>
<tr>
<td>Exception</td>
</tr>
<tr>
<td>Fee charged by sheriff</td>
</tr>
<tr>
<td>Staggered registration system</td>
</tr>
</tbody>
</table>

Sheriffs

<table>
<thead>
<tr>
<th>Authorized to issue renewal of registration</th>
<th>Exception</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fee for renewal</td>
</tr>
</tbody>
</table>

Staggered registration system

<table>
<thead>
<tr>
<th>Studded tires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time extension for use</td>
</tr>
</tbody>
</table>

Value of

| Involved in claim | 54 | 307 |

MUNICIPALITIES:

Firemen

See Firemen's and Policemen's Pensions.

Neighborhood Rehabilitation Programs

<table>
<thead>
<tr>
<th>Counties</th>
</tr>
</thead>
</table>

| Authorized to establish | Inspection of eligible residences |

<table>
<thead>
<tr>
<th>Definitions</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fund</th>
</tr>
</thead>
</table>

| Established | Purpose |

<table>
<thead>
<tr>
<th>Legislative findings</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Municipalities</th>
</tr>
</thead>
</table>

| Authorized to establish | Inspection of eligible residences |

| 73 | 452 |
| 73 | 455 |
### INDEX

#### MUNICIPALITIES—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension or relief funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Firemen's pensions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Firemen's and Policemen's Pensions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policemen's pensions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Firemen's and Policemen's Pensions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policemen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Firemen's and Policemen's Pensions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waterworks and electric power systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audit</td>
<td>72</td>
<td>448</td>
</tr>
<tr>
<td>System established</td>
<td>72</td>
<td>447</td>
</tr>
<tr>
<td>Acquisition and operation</td>
<td>72</td>
<td>438</td>
</tr>
<tr>
<td>Alternative procedure</td>
<td>72</td>
<td>450</td>
</tr>
<tr>
<td>Bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional</td>
<td>72</td>
<td>446</td>
</tr>
<tr>
<td>Amount</td>
<td>72</td>
<td>446</td>
</tr>
<tr>
<td>Interest</td>
<td>72</td>
<td>440</td>
</tr>
<tr>
<td>Payment</td>
<td>72</td>
<td>441</td>
</tr>
<tr>
<td>Issuance</td>
<td>72</td>
<td>440</td>
</tr>
<tr>
<td>Ordinance authorizing</td>
<td>72</td>
<td>440</td>
</tr>
<tr>
<td>Covenants with bondholders</td>
<td>72</td>
<td>442</td>
</tr>
<tr>
<td>Payable solely from revenues derived from system</td>
<td>72</td>
<td>441</td>
</tr>
<tr>
<td>Cost estimate</td>
<td>72</td>
<td>440</td>
</tr>
<tr>
<td>Eminent domain</td>
<td>72</td>
<td>439</td>
</tr>
<tr>
<td>Exception</td>
<td>72</td>
<td>440</td>
</tr>
<tr>
<td>Additions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds</td>
<td>72</td>
<td>447</td>
</tr>
<tr>
<td>Issuance</td>
<td>72</td>
<td>447</td>
</tr>
<tr>
<td>Bondholders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lien</td>
<td>72</td>
<td>442</td>
</tr>
<tr>
<td>Rights</td>
<td>72</td>
<td>448</td>
</tr>
<tr>
<td>Protection and enforcement</td>
<td>72</td>
<td>450</td>
</tr>
<tr>
<td>Construction of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electric power systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction of improvements to municipal</td>
<td>72</td>
<td>438</td>
</tr>
<tr>
<td>Additional and alternative method</td>
<td>72</td>
<td>449</td>
</tr>
<tr>
<td>Grants, loans or advances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acceptance</td>
<td>72</td>
<td>449</td>
</tr>
<tr>
<td>Lien of bondholders</td>
<td>72</td>
<td>442</td>
</tr>
<tr>
<td>Operating contract</td>
<td>72</td>
<td>445</td>
</tr>
<tr>
<td>Rates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonpayment</td>
<td>72</td>
<td>447</td>
</tr>
<tr>
<td>Payment of interest on bonds</td>
<td>72</td>
<td>441, 445</td>
</tr>
<tr>
<td>Sinking fund created by rates charged</td>
<td>72</td>
<td>441</td>
</tr>
<tr>
<td>Sufficient for payment of bonds</td>
<td>72</td>
<td>445</td>
</tr>
</tbody>
</table>

#### NARCOTICS:

Uniform Controlled Substances Act

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>19</td>
</tr>
<tr>
<td>II</td>
<td>19</td>
</tr>
<tr>
<td>III</td>
<td>19</td>
</tr>
<tr>
<td>IV</td>
<td>19</td>
</tr>
</tbody>
</table>

#### NATIONAL GUARD:

<table>
<thead>
<tr>
<th>Members</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base pay</td>
<td>88</td>
</tr>
</tbody>
</table>
# NATURAL RESOURCES:

<table>
<thead>
<tr>
<th>Conservation officers</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusion from coverage of wage and hour law</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Oath</td>
<td>83</td>
<td>505</td>
</tr>
<tr>
<td>Qualifications</td>
<td>83</td>
<td>505</td>
</tr>
<tr>
<td>Supplemental pay in lieu of overtime</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Certification by director</td>
<td>82</td>
<td>505</td>
</tr>
<tr>
<td>Limitation</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Work week</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation of rule establishing by director</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Deer and wild turkey kills</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reporting procedure</td>
<td>77</td>
<td>471</td>
</tr>
<tr>
<td>Director</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional powers and duties</td>
<td>75</td>
<td>463</td>
</tr>
<tr>
<td>Regulation of digging season of ginseng</td>
<td>75</td>
<td>469</td>
</tr>
<tr>
<td>Ginseng</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation of digging season</td>
<td>75</td>
<td>469</td>
</tr>
<tr>
<td>Hunting and fishing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When license revoked</td>
<td>78</td>
<td>472</td>
</tr>
<tr>
<td>Littering</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Littering.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resolution urging Congress to oppose proposed Fisher-Mathias legislation (Potomac River Shoreline Area)</td>
<td>814</td>
<td></td>
</tr>
<tr>
<td>Surface mining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limitation on mining in Cranberry wilderness study area</td>
<td>81</td>
<td>503</td>
</tr>
<tr>
<td>Water Pollution Control Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See Water Pollution Control Act.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wildlife</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pelts, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale permitted</td>
<td>76</td>
<td>469</td>
</tr>
<tr>
<td>Sale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty</td>
<td>76</td>
<td>470</td>
</tr>
<tr>
<td>Prohibited</td>
<td>76</td>
<td>469</td>
</tr>
<tr>
<td>Exception</td>
<td>76</td>
<td>469</td>
</tr>
</tbody>
</table>

# OIL AND GAS:

<table>
<thead>
<tr>
<th>Appeal and error</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>From order of issuance or refusal of permit to drill or fracture</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Introduction of liquids or waste into wells</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Appeals from decision</td>
<td>84</td>
<td>528, 545</td>
</tr>
<tr>
<td>Applicability of article</td>
<td>84</td>
<td>545</td>
</tr>
<tr>
<td>Exclusions</td>
<td>84</td>
<td></td>
</tr>
<tr>
<td>Coal operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension of coal operations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application by petition</td>
<td>84</td>
<td>539</td>
</tr>
<tr>
<td>Hearing</td>
<td>84</td>
<td>540</td>
</tr>
<tr>
<td>Coal operator to file maps and plans</td>
<td>84</td>
<td>538</td>
</tr>
<tr>
<td>Notice</td>
<td>84</td>
<td>539</td>
</tr>
<tr>
<td>Definitions</td>
<td>84</td>
<td>509, 542</td>
</tr>
<tr>
<td>Drilling unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Validity of unit agreements</td>
<td>84</td>
<td>561</td>
</tr>
<tr>
<td>Application to establish</td>
<td>84</td>
<td>554</td>
</tr>
<tr>
<td>Contents</td>
<td>84</td>
<td>554</td>
</tr>
<tr>
<td>Hearing</td>
<td>84</td>
<td>554</td>
</tr>
<tr>
<td>Notice</td>
<td>84</td>
<td>555</td>
</tr>
<tr>
<td>Contents</td>
<td>84</td>
<td>555</td>
</tr>
<tr>
<td>Establishment</td>
<td>84</td>
<td>556</td>
</tr>
</tbody>
</table>
**INDEX**

<table>
<thead>
<tr>
<th>OIL AND GAS—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drilling unit—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest in gas produced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pooling of interests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Order directing</td>
<td>84</td>
<td>558</td>
</tr>
<tr>
<td>Effect</td>
<td>84</td>
<td>559</td>
</tr>
<tr>
<td>General provisions</td>
<td>84</td>
<td>558</td>
</tr>
<tr>
<td>Recordation</td>
<td>84</td>
<td>560</td>
</tr>
<tr>
<td>Operations on</td>
<td>84</td>
<td>561</td>
</tr>
<tr>
<td>Maps, plats and surveys</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drilling or fracturing wells</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requirements</td>
<td>84</td>
<td>513</td>
</tr>
<tr>
<td>Notice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drilling or fracturing wells</td>
<td>84</td>
<td>513</td>
</tr>
<tr>
<td>Introducing liquids or waste into wells</td>
<td>84</td>
<td>520</td>
</tr>
<tr>
<td>Objections to proposed drilling and reclamation of wells</td>
<td>84</td>
<td>523</td>
</tr>
<tr>
<td>Hearing</td>
<td>84</td>
<td>523</td>
</tr>
<tr>
<td>Shallow gas well review board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority</td>
<td>84</td>
<td>548</td>
</tr>
<tr>
<td>Composition</td>
<td>84</td>
<td>546</td>
</tr>
<tr>
<td>Established</td>
<td>84</td>
<td>546</td>
</tr>
<tr>
<td>Injunctive relief</td>
<td>84</td>
<td>561</td>
</tr>
<tr>
<td>Legal council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By attorney general or prosecuting attorney</td>
<td>84</td>
<td>560</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>84</td>
<td>541</td>
</tr>
<tr>
<td>Meetings</td>
<td>84</td>
<td>547</td>
</tr>
<tr>
<td>Notice</td>
<td>84</td>
<td>548</td>
</tr>
<tr>
<td>Members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>84</td>
<td>546</td>
</tr>
<tr>
<td>Compensation</td>
<td>84</td>
<td>547</td>
</tr>
<tr>
<td>Qualifications</td>
<td>84</td>
<td>546</td>
</tr>
<tr>
<td>Vacancy</td>
<td>84</td>
<td>547</td>
</tr>
<tr>
<td>Notice requirements</td>
<td>84</td>
<td>549</td>
</tr>
<tr>
<td>Orders</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judicial review</td>
<td>84</td>
<td>560</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation</td>
<td>84</td>
<td>549</td>
</tr>
<tr>
<td>Violation</td>
<td>84</td>
<td>560</td>
</tr>
<tr>
<td>Penalties</td>
<td>84</td>
<td>560</td>
</tr>
<tr>
<td>Wells</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abandonment and plugging</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Affidavit showing time and manner of plugging</td>
<td>84</td>
<td>532</td>
</tr>
<tr>
<td>Bonds, surety</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance bond or securities in lieu thereof</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Method of plugging</td>
<td>84</td>
<td>532</td>
</tr>
<tr>
<td>Notice of intention</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Procedure generally</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Drilling or fracturing wells</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeals from decisions</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Coal seam</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Information furnished coal operators</td>
<td>84</td>
<td>513</td>
</tr>
<tr>
<td>Notice to coal operators and department of mines</td>
<td>84</td>
<td>514, 519</td>
</tr>
<tr>
<td>Contents of notice</td>
<td>84</td>
<td>519</td>
</tr>
<tr>
<td>Objections to proposed drilling or fracturing</td>
<td>84</td>
<td>523, 527</td>
</tr>
<tr>
<td>Agreed location or conditions</td>
<td>84</td>
<td>523, 550</td>
</tr>
<tr>
<td>Hearings</td>
<td>84</td>
<td>523, 550</td>
</tr>
<tr>
<td>Indication of changes, etc., on plats</td>
<td>84</td>
<td>523, 550</td>
</tr>
<tr>
<td>Permits, issuance</td>
<td>84</td>
<td>523, 551</td>
</tr>
<tr>
<td>Distance limitations</td>
<td>84</td>
<td>552</td>
</tr>
<tr>
<td>Performance bond or securities in lieu thereof</td>
<td>84</td>
<td>515</td>
</tr>
<tr>
<td>Forfeiture of bond</td>
<td>84</td>
<td>519</td>
</tr>
</tbody>
</table>
**INDEX**

**OIL AND GAS—(continued):**

Wells—(continued):

Drilling or fracturing wells—(continued):

<table>
<thead>
<tr>
<th>Permits</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application</td>
<td>84</td>
<td>511</td>
</tr>
<tr>
<td>Failure to obtain</td>
<td>84</td>
<td>511</td>
</tr>
<tr>
<td>Information</td>
<td>84</td>
<td>512</td>
</tr>
<tr>
<td>Issuance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When not issued</td>
<td>84</td>
<td>511</td>
</tr>
<tr>
<td>Number</td>
<td>84</td>
<td>511</td>
</tr>
<tr>
<td>Penalty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violations</td>
<td>84</td>
<td>511</td>
</tr>
<tr>
<td>Performance bond</td>
<td></td>
<td></td>
</tr>
<tr>
<td>or securities in lieu thereof</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Forfeiture of bond</td>
<td>84</td>
<td>519</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plats showing location</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>84</td>
<td>513</td>
</tr>
<tr>
<td>Prerequisite to drilling</td>
<td>84</td>
<td>513</td>
</tr>
<tr>
<td>Required for certain other wells</td>
<td>84</td>
<td>519</td>
</tr>
<tr>
<td>Required for drilling</td>
<td>84</td>
<td>511</td>
</tr>
<tr>
<td>Responsible agent, designation</td>
<td>84</td>
<td>512</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plats showing location</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>84</td>
<td>513</td>
</tr>
<tr>
<td>Filing of notice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prerequisite to drilling</td>
<td>84</td>
<td>513</td>
</tr>
</tbody>
</table>

Introduction of liquids or waste into wells

<table>
<thead>
<tr>
<th>Appeals from decision</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Coal seams</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Condition, agreed</td>
<td>84</td>
<td>512</td>
</tr>
<tr>
<td>Notice to coal operators and department of mines</td>
<td>84</td>
<td>523</td>
</tr>
<tr>
<td>Contents of notice</td>
<td>84</td>
<td>520</td>
</tr>
<tr>
<td>Hearings</td>
<td>84</td>
<td>524</td>
</tr>
<tr>
<td>Indication of changes, etc., on plats</td>
<td>84</td>
<td>525</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Locations</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreed location</td>
<td>84</td>
<td>523</td>
</tr>
<tr>
<td>Notices</td>
<td>84</td>
<td>523</td>
</tr>
<tr>
<td>Objections</td>
<td>84</td>
<td>523</td>
</tr>
<tr>
<td>Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance</td>
<td>84</td>
<td>520, 523</td>
</tr>
<tr>
<td>Performance bond</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required</td>
<td>84</td>
<td>520</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Plats</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contents</td>
<td>84</td>
<td>520</td>
</tr>
<tr>
<td>Preparation</td>
<td>84</td>
<td>520</td>
</tr>
<tr>
<td>Prerequisite</td>
<td>84</td>
<td>520</td>
</tr>
</tbody>
</table>

Plugging

<table>
<thead>
<tr>
<th>Method of plugging well</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedure generally</td>
<td>84</td>
<td>532</td>
</tr>
</tbody>
</table>

Protective devices

<table>
<thead>
<tr>
<th>When well penetrates workable coal bed</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>84</td>
<td>529</td>
</tr>
</tbody>
</table>

Reclamation

<table>
<thead>
<tr>
<th>Affidavit showing time and manner of reclamation</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bond, surety</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance bond or securities in lieu thereof</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Method of plugging</td>
<td>84</td>
<td>532</td>
</tr>
<tr>
<td>Notice of intention</td>
<td>84</td>
<td>529</td>
</tr>
<tr>
<td>Procedure generally</td>
<td>84</td>
<td>529</td>
</tr>
</tbody>
</table>

Shallow gas wells

<table>
<thead>
<tr>
<th>Indication of changes, etc., on plats</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objections to proposed drilling</td>
<td>84</td>
<td>527</td>
</tr>
<tr>
<td>Notice</td>
<td>84</td>
<td>527</td>
</tr>
<tr>
<td>Permits, issuance</td>
<td>84</td>
<td>528</td>
</tr>
<tr>
<td>Distance limitations</td>
<td>84</td>
<td>552</td>
</tr>
</tbody>
</table>
### OPEN GOVERNMENTAL PROCEEDINGS:

<table>
<thead>
<tr>
<th>Definitions</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings open to public</td>
<td>85</td>
<td>564</td>
</tr>
<tr>
<td>Enforcement by injunction</td>
<td>85</td>
<td>565</td>
</tr>
<tr>
<td>Minutes available to public</td>
<td>85</td>
<td>566</td>
</tr>
<tr>
<td>Information</td>
<td>85</td>
<td>566</td>
</tr>
<tr>
<td>Rules and regulations regarding attendance</td>
<td>85</td>
<td>567</td>
</tr>
<tr>
<td>Violations</td>
<td>85</td>
<td>567</td>
</tr>
<tr>
<td>Penalties</td>
<td>85</td>
<td>568</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Procedings</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minutes available to public</td>
<td>85</td>
<td>567</td>
</tr>
<tr>
<td>Information</td>
<td>85</td>
<td>567</td>
</tr>
<tr>
<td>Open to public</td>
<td>85</td>
<td>567</td>
</tr>
<tr>
<td>Enforcement by injunction</td>
<td>85</td>
<td>567</td>
</tr>
<tr>
<td>Violations</td>
<td>85</td>
<td>568</td>
</tr>
<tr>
<td>Penalties</td>
<td>85</td>
<td>568</td>
</tr>
</tbody>
</table>

### PARKING:

<table>
<thead>
<tr>
<th>Capitol</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation</td>
<td>45</td>
<td>283</td>
</tr>
<tr>
<td>Exceptions</td>
<td>45</td>
<td>284</td>
</tr>
<tr>
<td>Violations</td>
<td>45</td>
<td>285</td>
</tr>
</tbody>
</table>

### PARSONS, OSHEL C.:

Resolution memorializing the life and career of Oshel C. Parsons, Veteran Parliamentarian and Assistant Clerk of the House of Delegates

### PERSONAL INCOME TAX:

See Taxation.

### PHENYLKETONURIA:

See Health.

### POSTMORTEM EXAMINATIONS:

See Autopsy.

### POTOMAC RIVER SHORELINE AREA:

See Natural Resources.

### PROFESSIONS AND OCCUPATIONS:

<table>
<thead>
<tr>
<th>Pharmacist's license</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspension or revocation</td>
<td>86</td>
<td>569</td>
</tr>
<tr>
<td>Hearing</td>
<td>86</td>
<td>569</td>
</tr>
<tr>
<td>Notice</td>
<td>86</td>
<td>569</td>
</tr>
<tr>
<td>Judicial review</td>
<td>86</td>
<td>570</td>
</tr>
<tr>
<td>Report on proceedings</td>
<td>86</td>
<td>570</td>
</tr>
</tbody>
</table>

West Virginia Occupational Therapy Practice Act

Board of Occupational Therapy

<table>
<thead>
<tr>
<th>Established</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>License, occupational therapist, etc.</td>
<td>87</td>
<td>573</td>
</tr>
<tr>
<td>Issuance</td>
<td>87</td>
<td>580</td>
</tr>
<tr>
<td>Renewal</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Suspension and revocation</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Hearing</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Judicial review</td>
<td>87</td>
<td>583</td>
</tr>
<tr>
<td>Notice</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Procedure</td>
<td>87</td>
<td>583</td>
</tr>
<tr>
<td>Waiver of requirements by board</td>
<td>87</td>
<td>580</td>
</tr>
</tbody>
</table>
PROFESSIONS AND OCCUPATIONS—(continued):

West Virginia occupational therapy practice act—(continued):

Board of occupational therapy—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings</td>
<td>87</td>
<td>575</td>
</tr>
<tr>
<td>Members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment</td>
<td>87</td>
<td>573</td>
</tr>
<tr>
<td>Compensation</td>
<td>87</td>
<td>575</td>
</tr>
<tr>
<td>Qualifications</td>
<td>87</td>
<td>573</td>
</tr>
<tr>
<td>Removal</td>
<td>87</td>
<td>574</td>
</tr>
<tr>
<td>Term</td>
<td>87</td>
<td>574</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>87</td>
<td>575</td>
</tr>
<tr>
<td>Vacancy</td>
<td>87</td>
<td>574</td>
</tr>
<tr>
<td>Declaration of purpose</td>
<td>87</td>
<td>571</td>
</tr>
<tr>
<td>Definitions</td>
<td>87</td>
<td>571</td>
</tr>
<tr>
<td>Occupational therapist</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>87</td>
<td>572</td>
</tr>
<tr>
<td>Examination</td>
<td>87</td>
<td>579</td>
</tr>
<tr>
<td>Application</td>
<td>87</td>
<td>579</td>
</tr>
<tr>
<td>Fee</td>
<td>87</td>
<td>585</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required</td>
<td>87</td>
<td>573, 577</td>
</tr>
<tr>
<td>Suspension and revocation by board</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Hearing</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Judicial review</td>
<td>87</td>
<td>585</td>
</tr>
<tr>
<td>Notice given by board</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Procedure</td>
<td>87</td>
<td>583</td>
</tr>
<tr>
<td>Waiver of requirements by board</td>
<td>87</td>
<td>580</td>
</tr>
<tr>
<td>Limitation on treatment of persons</td>
<td>87</td>
<td>573</td>
</tr>
<tr>
<td>Qualifications</td>
<td>87</td>
<td>578</td>
</tr>
<tr>
<td>Treatment of persons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>By referral only</td>
<td>87</td>
<td>573</td>
</tr>
<tr>
<td>Occupational therapy assistant</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>87</td>
<td>572</td>
</tr>
<tr>
<td>Examination</td>
<td>87</td>
<td>579</td>
</tr>
<tr>
<td>Application</td>
<td>87</td>
<td>579</td>
</tr>
<tr>
<td>Fee</td>
<td>87</td>
<td>585</td>
</tr>
<tr>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Required</td>
<td>87</td>
<td>573, 577</td>
</tr>
<tr>
<td>Suspension and revocation by board</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Hearing</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Judicial review</td>
<td>87</td>
<td>585</td>
</tr>
<tr>
<td>Notice given by board</td>
<td>87</td>
<td>582</td>
</tr>
<tr>
<td>Procedure</td>
<td>87</td>
<td>583</td>
</tr>
<tr>
<td>Waiver of requirements by board</td>
<td>87</td>
<td>580</td>
</tr>
<tr>
<td>Limitation on practice by</td>
<td>87</td>
<td>573</td>
</tr>
<tr>
<td>Qualifications</td>
<td>87</td>
<td>578</td>
</tr>
<tr>
<td>Persons and practices not affected by article</td>
<td></td>
<td>577</td>
</tr>
<tr>
<td>Violation of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions to enjoin violations</td>
<td>87</td>
<td>587</td>
</tr>
<tr>
<td>Penalties for violation</td>
<td>87</td>
<td>586</td>
</tr>
</tbody>
</table>

PUBLIC SAFETY:

Department of Public Safety

Members

Exclusion from wage and hour law                                     89  591
Legislative findings and declarations                                89  590
Supplemental pay in lieu of overtime

Amount                                                               89  591
Persons excluded                                                     89  591
Superintendent to promulgate rule or regulation                      89  591
### Index

**PUBLIC SAFETY—(continued):**

<table>
<thead>
<tr>
<th>Officers and employees</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bond, surety</td>
<td>89</td>
</tr>
<tr>
<td>Captains, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Corporals, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Lieutenant colonels, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Lieutenants, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Majors, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Master sergeants, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Sergeants, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Troopers first class, salaries</td>
<td>89</td>
</tr>
<tr>
<td>Troopers, newly enlisted</td>
<td>89</td>
</tr>
</tbody>
</table>

**PUBLIC SERVICE COMMISSION:**

<table>
<thead>
<tr>
<th>Railroad property</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority of commission to enter and inspect</td>
<td>90</td>
</tr>
</tbody>
</table>

**PUBLIC WORKS:**

<table>
<thead>
<tr>
<th>Public works projects</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definitions</td>
<td>91</td>
</tr>
<tr>
<td>Products</td>
<td></td>
</tr>
<tr>
<td>Domestic aluminum, glass and steel</td>
<td>91</td>
</tr>
<tr>
<td>Required use in construction projects</td>
<td>91</td>
</tr>
<tr>
<td>Compliance by contractor</td>
<td>91</td>
</tr>
<tr>
<td>Exception</td>
<td>91</td>
</tr>
</tbody>
</table>

**REGULATION OF TRADE:**

<table>
<thead>
<tr>
<th>Limited partnership</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign limited partnership</td>
<td></td>
</tr>
<tr>
<td>Statutory attorney-in-fact</td>
<td>92</td>
</tr>
<tr>
<td>Appointment of Secretary of State</td>
<td>92</td>
</tr>
<tr>
<td>When deemed conducting business in this State</td>
<td>92</td>
</tr>
<tr>
<td>Formation</td>
<td>92</td>
</tr>
<tr>
<td>Secretary of State</td>
<td></td>
</tr>
<tr>
<td>Service of notice or process</td>
<td>92</td>
</tr>
<tr>
<td>Acceptance</td>
<td>92</td>
</tr>
<tr>
<td>Exception</td>
<td>92</td>
</tr>
<tr>
<td>Constituted attorney-in-fact</td>
<td>92</td>
</tr>
<tr>
<td>Statutory attorney-in-fact</td>
<td></td>
</tr>
<tr>
<td>Appointment as, for foreign limited partnership</td>
<td>92</td>
</tr>
</tbody>
</table>

**RESOURCE RECOVERY-SOLID WASTE DISPOSAL AUTHORITY:**

<table>
<thead>
<tr>
<th>Conduct of proceedings</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>52</td>
</tr>
</tbody>
</table>

**ROADS AND HIGHWAYS:**

<table>
<thead>
<tr>
<th>Bonds</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuance and sale authorized</td>
<td></td>
</tr>
<tr>
<td>In amount of $100 million under authority of Better Highways Amendment of 1973</td>
<td>93</td>
</tr>
<tr>
<td>Resolution urging Governor and Department of Highways to place high priority upon early completion of Corridor G Highway</td>
<td>813</td>
</tr>
</tbody>
</table>

**SALARIES:**

<table>
<thead>
<tr>
<th>Board of occupational therapy</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation officers</td>
<td>87</td>
</tr>
<tr>
<td>See Natural Resources.</td>
<td></td>
</tr>
</tbody>
</table>
### SALARIES—(continued):

<table>
<thead>
<tr>
<th>Position</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Public Safety</td>
<td>89</td>
<td>589</td>
</tr>
<tr>
<td>Overtime compensation</td>
<td>89</td>
<td>591</td>
</tr>
<tr>
<td>Deputy Commissioner of banking</td>
<td>9</td>
<td>100</td>
</tr>
<tr>
<td>Magistrate assistants</td>
<td>24</td>
<td>175</td>
</tr>
<tr>
<td>Magistrate court clerks</td>
<td>24</td>
<td>173</td>
</tr>
<tr>
<td>Magistrate court deputy clerks</td>
<td>24</td>
<td>176</td>
</tr>
<tr>
<td>Magistrates</td>
<td>24</td>
<td>172</td>
</tr>
<tr>
<td>National Guard</td>
<td>88</td>
<td>588</td>
</tr>
<tr>
<td>School service and auxiliary personnel</td>
<td>42</td>
<td>235</td>
</tr>
<tr>
<td>Shallow Gas Well Review Board</td>
<td>84</td>
<td>547</td>
</tr>
<tr>
<td>Teachers</td>
<td>41</td>
<td>222</td>
</tr>
</tbody>
</table>

### SCHOOLS:

- **Board of Regents**
  - See Board of Regents.

- **Education of exceptional children**
  - Advisory council
    - Composition: 39 215
    - Duties: 39 216
    - Meetings
      - Announcement: 39 217
      - Minutes: 39 217
      - Number: 39 217
      - Quorum: 39 217
    - Members
      - Appointment: 39 215
      - Exceptions: 39 216
      - Qualifications: 39 216
      - Reappraisal: 39 216
      - Reimbursement: 39 216
      - Terms: 39 216
      - Commencement: 39 216
      - Vacancy: 39 216
  - Educational programs for
    - Establishment and maintenance of
      - County boards of education: 39 213
      - Additional educational services approved by state superintendent: 39 213
      - Implementation date of programs: 39 213
      - Rules and regulations:
        - Adoption by state board of education: 39 213
    - Examination: 39 214
    - Report: 39 214
    - General provisions: 39 213
    - State Superintendent
      - Administration of program: 39 214
      - Responsibilities: 39 214
  - Personnel
    - Auxiliary personnel
      - Class title: 42 235
      - Definitions: 42 225
      - Minimum monthly pay scale: 42 235
    - Service personnel
      - Class title: 42 235
      - Definitions: 42 225
      - Minimum monthly pay scale: 42 235
  - Resolution proposing constitutional amendment reducing number of votes required for approval of excess levy for school purposes: 811
## INDEX

### SCHOOLS—(continued):

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State supplemental salaries</td>
<td>41</td>
<td>222</td>
</tr>
<tr>
<td>Schedule</td>
<td>41</td>
<td>223</td>
</tr>
<tr>
<td>Teachers Retirement System</td>
<td></td>
<td></td>
</tr>
<tr>
<td>See State Teachers Retirement System</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### SECRETARY OF STATE:

See Actions and Suits.
See Regulation of Trade.

### SHEPHERDSTOWN:

Board of Regents

| Authorized to sell Rumsey Hall to Shepherdstown      | 111 | 805  |

### SHERIFF:

See Magistrate Courts.

### SOFT DRINK TAX:

See Taxation.

### STATE TEACHERS RETIREMENT SYSTEM:

<table>
<thead>
<tr>
<th>Retirement board</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional member</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Election</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Manner</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Term</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Vacancy</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Members</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Oath</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Teachers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Absences</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Computation of service</td>
<td>38</td>
<td>209</td>
</tr>
<tr>
<td>Exceptions</td>
<td>38</td>
<td>211</td>
</tr>
<tr>
<td>Service Credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eligibility for</td>
<td>38</td>
<td>211</td>
</tr>
<tr>
<td>For military service</td>
<td>38</td>
<td>210</td>
</tr>
<tr>
<td>Out-of-state service</td>
<td>38</td>
<td>210</td>
</tr>
<tr>
<td>Contributions required</td>
<td>38</td>
<td>210</td>
</tr>
<tr>
<td>Exceptions</td>
<td>38</td>
<td>210</td>
</tr>
<tr>
<td>Withdrawal</td>
<td>38</td>
<td>212</td>
</tr>
</tbody>
</table>

### SURPLUS PROPERTY:

Surplus state property

<table>
<thead>
<tr>
<th>Commissioner of Finance and Administration</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>authorized to dispose of</td>
<td>94</td>
<td>611</td>
</tr>
<tr>
<td>Method</td>
<td>94</td>
<td>612</td>
</tr>
<tr>
<td>Sale</td>
<td>94</td>
<td>612</td>
</tr>
<tr>
<td>Advertisement</td>
<td>94</td>
<td>612</td>
</tr>
<tr>
<td>Disposition of proceeds</td>
<td>94</td>
<td>613</td>
</tr>
<tr>
<td>Report by Commissioner to Legislative Auditor</td>
<td>94</td>
<td>613</td>
</tr>
</tbody>
</table>

### TAXATION:

Actions and suits, limitation of
Collection of taxes due state or subdivision thereof

| Limitation period                                      | 95  | 697  |
| Extension                                             | 95  | 698  |

Additions to tax

<p>| Failure to file return or pay                         | 95  | 651  |
| False or fraudulent return                            | 95  | 652  |
| For negligence or intentional disregard of rules and regulations | 95  | 651  |
| Limitation and special rule                           | 95  | 651  |
| Treated as tax                                        | 95  | 652  |</p>
<table>
<thead>
<tr>
<th>TAXATION—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative decisions of tax commissioner</td>
<td>95</td>
<td>629</td>
</tr>
<tr>
<td>Release</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual tax on incomes of certain carriers</td>
<td>95</td>
<td>668</td>
</tr>
<tr>
<td>Federal taxable income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report of change in, by taxpayer</td>
<td>95</td>
<td>668</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>668</td>
</tr>
<tr>
<td>Appeal, assessment of taxes</td>
<td>95</td>
<td>636</td>
</tr>
<tr>
<td>Bond</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty</td>
<td>95</td>
<td>636</td>
</tr>
<tr>
<td>Petition</td>
<td>95</td>
<td>636</td>
</tr>
<tr>
<td>Right of appeal</td>
<td>95</td>
<td>635</td>
</tr>
<tr>
<td>Venue of action</td>
<td>95</td>
<td>635</td>
</tr>
<tr>
<td>Application of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes to which applicable</td>
<td>95</td>
<td>624</td>
</tr>
<tr>
<td>Taxes to which not applicable</td>
<td>95</td>
<td>625</td>
</tr>
<tr>
<td>Assessment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abatement or amendment</td>
<td>95</td>
<td>633</td>
</tr>
<tr>
<td>General assessment</td>
<td>95</td>
<td>632</td>
</tr>
<tr>
<td>Jeopardy assessment</td>
<td>95</td>
<td>633</td>
</tr>
<tr>
<td>Limitation</td>
<td>95</td>
<td>646</td>
</tr>
<tr>
<td>Notice</td>
<td>95</td>
<td>633</td>
</tr>
<tr>
<td>Petition for reassessment</td>
<td>95</td>
<td>634</td>
</tr>
<tr>
<td>Business and occupation tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business and occupation tax credit for industrial expansion</td>
<td>99</td>
<td>712</td>
</tr>
<tr>
<td>Industrial taxpayers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of credit allowed</td>
<td>99</td>
<td>713</td>
</tr>
<tr>
<td>Effective date</td>
<td>99</td>
<td>713</td>
</tr>
<tr>
<td>General provisions</td>
<td>96</td>
<td>707</td>
</tr>
<tr>
<td>Defined</td>
<td>96</td>
<td>707</td>
</tr>
<tr>
<td>Meaning of terms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Businesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banking and financial businesses</td>
<td>96</td>
<td>704</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>96</td>
<td>705</td>
</tr>
<tr>
<td>Electric power</td>
<td>96</td>
<td>703, 705</td>
</tr>
<tr>
<td>Exception</td>
<td>96</td>
<td>702, 706</td>
</tr>
<tr>
<td>Public service or utility business</td>
<td>96</td>
<td>703</td>
</tr>
<tr>
<td>Cities, towns or villages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restricted from imposing</td>
<td>96</td>
<td>706</td>
</tr>
<tr>
<td>Computation</td>
<td>98</td>
<td>709</td>
</tr>
<tr>
<td>Delinquent taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appointment of agents for collection of, by tax commissioner</td>
<td>95</td>
<td>669</td>
</tr>
<tr>
<td>Electric power</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Produced by public utilities or others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When not sold to others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exempted from taxation</td>
<td>96</td>
<td>702</td>
</tr>
<tr>
<td>Exemptions, generally</td>
<td>97</td>
<td>708</td>
</tr>
<tr>
<td>Gasification or liquefaction of coal</td>
<td>97</td>
<td>709</td>
</tr>
<tr>
<td>To whom provisions do not apply</td>
<td>97</td>
<td>708</td>
</tr>
<tr>
<td>Food products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Processing and sale on wholesale basis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject to taxation</td>
<td>96</td>
<td>702</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>669</td>
</tr>
<tr>
<td>Inspection of business and occupation tax returns by municipalities</td>
<td>95</td>
<td>629</td>
</tr>
<tr>
<td>Written request of mayor of municipality required</td>
<td>95</td>
<td>629</td>
</tr>
<tr>
<td>Normal tax, defined</td>
<td>96</td>
<td>706</td>
</tr>
<tr>
<td>Computation</td>
<td>96</td>
<td>706</td>
</tr>
</tbody>
</table>
# INDEX

**TAXATION—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business and occupation tax—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment</td>
<td>98</td>
<td>709</td>
</tr>
<tr>
<td>Privilege tax</td>
<td></td>
<td>699</td>
</tr>
<tr>
<td>Imposition of</td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>Products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electric power produced by public utilities or others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For own use</td>
<td>96</td>
<td>702</td>
</tr>
<tr>
<td>Exempted from taxation</td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>Manufacturing, compounding or preparing for sale</td>
<td></td>
<td>702</td>
</tr>
<tr>
<td>Amount of tax levied</td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>Partially within and without this state</td>
<td></td>
<td>703</td>
</tr>
<tr>
<td>Measure of tax</td>
<td></td>
<td>96</td>
</tr>
<tr>
<td>Receivership or insolvency proceedings</td>
<td></td>
<td>95</td>
</tr>
<tr>
<td>Returns and remittances</td>
<td></td>
<td>699</td>
</tr>
<tr>
<td>Extension by commissioner of time for making</td>
<td></td>
<td>95</td>
</tr>
<tr>
<td>Tax year</td>
<td></td>
<td>711</td>
</tr>
<tr>
<td>Business franchise registration certificate tax</td>
<td></td>
<td>669</td>
</tr>
<tr>
<td>Certificate, registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cancellation of, by tax commissioner</td>
<td>95</td>
<td>664</td>
</tr>
<tr>
<td>Hearing</td>
<td>95</td>
<td>664, 667</td>
</tr>
<tr>
<td>Appeal</td>
<td>95</td>
<td>667</td>
</tr>
<tr>
<td>Notice</td>
<td>95</td>
<td>665</td>
</tr>
<tr>
<td>Display</td>
<td>95</td>
<td>663</td>
</tr>
<tr>
<td>Penalties for conducting business without certificate</td>
<td>95</td>
<td>665</td>
</tr>
<tr>
<td>or with expired certificate</td>
<td></td>
<td>663</td>
</tr>
<tr>
<td>Time for which granted</td>
<td>95</td>
<td>664</td>
</tr>
<tr>
<td>Conduct of business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ceasing to engage in business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice to tax commissioner of discontinuance, etc.,</td>
<td>95</td>
<td>666</td>
</tr>
<tr>
<td>of business</td>
<td></td>
<td>666</td>
</tr>
<tr>
<td>Engaging in business contrary to provisions of article</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liability for back registration taxes</td>
<td>95</td>
<td>666</td>
</tr>
<tr>
<td>Without certificate or with expired certificate</td>
<td>95</td>
<td>665</td>
</tr>
<tr>
<td>Cigarette tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination of witnesses by commissioner</td>
<td>95</td>
<td>687</td>
</tr>
<tr>
<td>Records required of wholesalers, etc.</td>
<td>95</td>
<td>686</td>
</tr>
<tr>
<td>Examination by commissioner</td>
<td>95</td>
<td>687</td>
</tr>
<tr>
<td>Keeping and preservation</td>
<td>95</td>
<td>686</td>
</tr>
<tr>
<td>Report required of wholesalers, etc.</td>
<td>95</td>
<td>686</td>
</tr>
<tr>
<td>Filing</td>
<td>95</td>
<td>686</td>
</tr>
<tr>
<td>Stock</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of commissioner to inspect</td>
<td>95</td>
<td>687</td>
</tr>
<tr>
<td>Employees and agents of commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond</td>
<td>95</td>
<td>688</td>
</tr>
<tr>
<td>Enforcement powers</td>
<td>95</td>
<td>687</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>691</td>
</tr>
<tr>
<td>Increasing amount</td>
<td>102</td>
<td>718</td>
</tr>
<tr>
<td>Rate</td>
<td>102</td>
<td>719</td>
</tr>
<tr>
<td>Rate changes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cigarettes on hand or in inventory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discount</td>
<td>102</td>
<td>719</td>
</tr>
<tr>
<td>Effect of rate changes on</td>
<td>102</td>
<td>719</td>
</tr>
<tr>
<td>Inventory, physical</td>
<td>102</td>
<td>719</td>
</tr>
<tr>
<td>Report</td>
<td>102</td>
<td>719</td>
</tr>
<tr>
<td>To determine additional tax which must be paid</td>
<td>102</td>
<td>719</td>
</tr>
<tr>
<td>Returns</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty for failure to file when no tax due</td>
<td>95</td>
<td>688</td>
</tr>
<tr>
<td>General provisions</td>
<td>95</td>
<td>688</td>
</tr>
<tr>
<td>TAXATION—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>Cigarette tax—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stamps</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Payment for destroyed stamps by commissioner</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Redemption by commissioner</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Refund</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>General procedure</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Citation of article</td>
<td>95</td>
<td>624</td>
</tr>
<tr>
<td>Collection of taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due state or subdivision thereof</td>
<td>95</td>
<td>697</td>
</tr>
<tr>
<td>Limitation period</td>
<td>95</td>
<td>697</td>
</tr>
<tr>
<td>Extension</td>
<td>95</td>
<td>698</td>
</tr>
<tr>
<td>Extension period</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agreement</td>
<td>95</td>
<td>648</td>
</tr>
<tr>
<td>General provisions</td>
<td>93</td>
<td>636</td>
</tr>
<tr>
<td>Limitations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>False or fraudulent return</td>
<td>95</td>
<td>648</td>
</tr>
<tr>
<td>Inheritance tax liens</td>
<td>95</td>
<td>648</td>
</tr>
<tr>
<td>Where assessment is issued</td>
<td>95</td>
<td>648</td>
</tr>
<tr>
<td>Where assessment is not issued</td>
<td>95</td>
<td>648</td>
</tr>
<tr>
<td>Nonresident contractor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate of dissolution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not to bar subsequent investigations with respect to taxpayer</td>
<td>95</td>
<td>638</td>
</tr>
<tr>
<td>Payment of taxes prerequisite for issuance</td>
<td>95</td>
<td>637</td>
</tr>
<tr>
<td>Costs</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Final settlement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes collected before</td>
<td>95</td>
<td>637</td>
</tr>
<tr>
<td>Injunctions</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Penalty</td>
<td>95</td>
<td>638</td>
</tr>
<tr>
<td>Selling out or quitting business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Taxes immediately due</td>
<td>95</td>
<td>638</td>
</tr>
<tr>
<td>Liability of purchaser for payment</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Consumer sales tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Associations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enforcement</td>
<td>95</td>
<td>681</td>
</tr>
<tr>
<td>Liability of officers for default</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>Corporations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enforcement</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>Liability of officers for default</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>Purchaser</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment against, by commissioner</td>
<td>95</td>
<td>681</td>
</tr>
<tr>
<td>Notice</td>
<td>95</td>
<td>681</td>
</tr>
<tr>
<td>Refusal to pay tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liability</td>
<td>95</td>
<td>681</td>
</tr>
<tr>
<td>Sales, taxable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Keeping and preservation by taxpayer</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>Time prescribed</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>Tax return and payment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General procedure</td>
<td>95</td>
<td>681</td>
</tr>
<tr>
<td>Corporation net income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crimes, generally</td>
<td>95</td>
<td>694</td>
</tr>
<tr>
<td>Person defined</td>
<td>95</td>
<td>695</td>
</tr>
<tr>
<td>Venue of action</td>
<td>95</td>
<td>695</td>
</tr>
<tr>
<td>Evasion, defeat, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional penalty</td>
<td>95</td>
<td>694</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>695</td>
</tr>
</tbody>
</table>
### INDEX

<table>
<thead>
<tr>
<th>TAXATION—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporation net income tax—(continued):</td>
<td>869</td>
<td>104 721</td>
</tr>
<tr>
<td>Meaning of terms</td>
<td></td>
<td>95 694</td>
</tr>
<tr>
<td>Updating</td>
<td></td>
<td>95 694</td>
</tr>
<tr>
<td>Payment of tax</td>
<td></td>
<td>95 625</td>
</tr>
<tr>
<td>Willful failure to comply with provisions</td>
<td></td>
<td>95 640</td>
</tr>
<tr>
<td>Additional penalty</td>
<td></td>
<td>95 631</td>
</tr>
<tr>
<td>Definitions</td>
<td></td>
<td>95 629</td>
</tr>
<tr>
<td>Distraint</td>
<td></td>
<td>100 714</td>
</tr>
<tr>
<td>Enforcement of provisions of article</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Exchange, reciprocal</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Tax commissioner to permit exchange of information with other states</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Gasoline and special fuel excise tax</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Gasoline or special fuel</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Imposition of tax on</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Penalty for failure to file return</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>When no tax due</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Rate increase</td>
<td></td>
<td>95 676</td>
</tr>
<tr>
<td>Applicability to gasoline or special fuel on hand or in inventory</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Refund of taxes</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Because of certain nonhighway uses</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Change of rate</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Emergency rescue services</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Gallonage exported or lost</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>General provisions</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Illegally collected</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Nonhighway uses</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Nonprofit ambulance services</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Partial refund of tax on tax-paid gallonage consumed in buses</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Petition</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Form</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Volunteer fire departments</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Reports</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Due date</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Filing</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Extension of, by tax commissioner</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Timely</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Records required, to verify reports and returns</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Examination by commissioner</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Kept by taxpayer</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Subpoena powers of commissioner</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Required</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Tax paid gasoline or special fuel</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Consumed in buses</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Partial refund of tax</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>General provisions</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Inheritance and transfer tax</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Assessment of property</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Amended</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Notice</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Recordation</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Procedure for making</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Bonds or stocks</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Transfer of, standing in name of decedent</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>By corporation not incorporated in this state</td>
<td></td>
<td>95 715</td>
</tr>
<tr>
<td>Liability of corporation or agent making transfer for taxes accruing which have not been paid</td>
<td></td>
<td>95 715</td>
</tr>
</tbody>
</table>
# INDEX

**TAXATION**—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inheritance and transfer tax—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bonds or stocks—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer of, standing in name of decedent—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice required</td>
<td>95</td>
<td>658</td>
</tr>
<tr>
<td>Reports</td>
<td>95</td>
<td>659</td>
</tr>
<tr>
<td>Without consent of tax commissioner</td>
<td>95</td>
<td>658</td>
</tr>
<tr>
<td>Liability of corporation or agent making transfer for tax thereafter assessed</td>
<td>95</td>
<td>658</td>
</tr>
<tr>
<td>Books and papers respecting property transferred</td>
<td></td>
<td>662</td>
</tr>
<tr>
<td>Inspection by tax commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disputes as to relationship between</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Settlement of, by tax commissioner</td>
<td>95</td>
<td>662</td>
</tr>
<tr>
<td>Estates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment of, by tax commissioner</td>
<td>95</td>
<td>660</td>
</tr>
<tr>
<td>Notice</td>
<td>95</td>
<td>660</td>
</tr>
<tr>
<td>Recoradion</td>
<td>95</td>
<td>660</td>
</tr>
<tr>
<td>Payment of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extension of time pending settlement</td>
<td>95</td>
<td>656</td>
</tr>
<tr>
<td>Time within which tax must be paid</td>
<td>95</td>
<td>660</td>
</tr>
<tr>
<td>Transfer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ascertainment</td>
<td>95</td>
<td>657</td>
</tr>
<tr>
<td>Decedent and transferee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disputes as to relationship between</td>
<td></td>
<td>662</td>
</tr>
<tr>
<td>Settlement of, by tax commissioner</td>
<td>95</td>
<td>662</td>
</tr>
<tr>
<td>Reports</td>
<td>95</td>
<td>657</td>
</tr>
<tr>
<td>Contents</td>
<td>95</td>
<td>657</td>
</tr>
<tr>
<td>Filing</td>
<td>95</td>
<td>658</td>
</tr>
<tr>
<td>When to be made</td>
<td>95</td>
<td>657</td>
</tr>
<tr>
<td>When transfer not reported to commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedure to determine whether transfer subject to tax</td>
<td>95</td>
<td>661</td>
</tr>
<tr>
<td>Fiduciaries and sureties on official bond</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liability of, for taxes, etc., on estate of decedent</td>
<td>95</td>
<td>662</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>663</td>
</tr>
<tr>
<td>Lien</td>
<td>95</td>
<td>655</td>
</tr>
<tr>
<td>Limitations upon collection</td>
<td>95</td>
<td>656</td>
</tr>
<tr>
<td>Payments and collection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Application of provisions</td>
<td>95</td>
<td>657</td>
</tr>
<tr>
<td>Due date</td>
<td>95</td>
<td>656</td>
</tr>
<tr>
<td>Effective date</td>
<td>95</td>
<td>657</td>
</tr>
<tr>
<td>Time extension</td>
<td>95</td>
<td>656</td>
</tr>
<tr>
<td>Policies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment of proceeds from</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice to tax commissioner required prior to</td>
<td>95</td>
<td>659</td>
</tr>
<tr>
<td>Contents</td>
<td>95</td>
<td>659</td>
</tr>
<tr>
<td>Failure to comply</td>
<td>95</td>
<td>660</td>
</tr>
<tr>
<td>Interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Applicable rules</td>
<td>95</td>
<td>650</td>
</tr>
<tr>
<td>For erroneous refund or credit</td>
<td>95</td>
<td>649</td>
</tr>
<tr>
<td>For overpayments</td>
<td>95</td>
<td>649</td>
</tr>
<tr>
<td>For underpayment of estimated business and occupation tax</td>
<td>95</td>
<td>649</td>
</tr>
<tr>
<td>For underpayment of taxes</td>
<td>95</td>
<td>648</td>
</tr>
<tr>
<td>Interstate arbitration of inheritance and death taxes</td>
<td></td>
<td>664</td>
</tr>
<tr>
<td>Additions to tax, penalties, interest</td>
<td>95</td>
<td>663</td>
</tr>
<tr>
<td>Interstate compromise of inheritance and death taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedure and authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investigations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority of commissioner to conduct</td>
<td>95</td>
<td>626</td>
</tr>
</tbody>
</table>
# INDEX

## TAXATION—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Land</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assessment, erroneous</td>
<td>105</td>
<td>724</td>
</tr>
<tr>
<td>Refund of money paid for</td>
<td>105</td>
<td>724</td>
</tr>
<tr>
<td>Sale of land for taxes</td>
<td>105</td>
<td>723</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>95</td>
<td>624</td>
</tr>
<tr>
<td><strong>Liens</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duration</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>General provisions</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Recordation</td>
<td>95</td>
<td>639</td>
</tr>
<tr>
<td>Release</td>
<td>95</td>
<td>640</td>
</tr>
<tr>
<td><strong>Motor carrier road tax</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority to examine carrier's records</td>
<td>95</td>
<td>678</td>
</tr>
<tr>
<td>Authority to examine witnesses under oath</td>
<td>95</td>
<td>678</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>680</td>
</tr>
<tr>
<td>Records and papers generally</td>
<td>95</td>
<td>677</td>
</tr>
<tr>
<td>Examination of</td>
<td>95</td>
<td>677</td>
</tr>
<tr>
<td>Refunds by commissioner</td>
<td>95</td>
<td>678</td>
</tr>
<tr>
<td>Claim</td>
<td>95</td>
<td>678</td>
</tr>
<tr>
<td>Filing deadline</td>
<td>95</td>
<td>679</td>
</tr>
<tr>
<td>Procedure</td>
<td>95</td>
<td>678</td>
</tr>
<tr>
<td><strong>Reports</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carriers' reports</td>
<td>95</td>
<td>677</td>
</tr>
<tr>
<td>Joint reports</td>
<td>95</td>
<td>677</td>
</tr>
<tr>
<td><strong>Return</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty for failure to file when no tax due</td>
<td>95</td>
<td>680</td>
</tr>
<tr>
<td><strong>Overpayment of taxes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim for</td>
<td>95</td>
<td>641</td>
</tr>
<tr>
<td>Forms</td>
<td>95</td>
<td>643</td>
</tr>
<tr>
<td>Hearing</td>
<td>95</td>
<td>644</td>
</tr>
<tr>
<td>Limitation</td>
<td>95</td>
<td>644</td>
</tr>
<tr>
<td>Erroneous</td>
<td>95</td>
<td>643</td>
</tr>
<tr>
<td>Petition</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Appeal</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Decision of court</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Remedy exclusive</td>
<td>95</td>
<td>643</td>
</tr>
<tr>
<td>Requisition for refund</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td><strong>Gasoline and special fuel tax</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim for refund</td>
<td>95</td>
<td>641, 671</td>
</tr>
<tr>
<td><strong>Interest</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>95</td>
<td>649</td>
</tr>
<tr>
<td><strong>Motor carrier road tax</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Claim for refund</td>
<td>95</td>
<td>641, 678</td>
</tr>
<tr>
<td>Refund</td>
<td>95</td>
<td>641</td>
</tr>
<tr>
<td>Claim for</td>
<td>95</td>
<td>641</td>
</tr>
<tr>
<td>Forms</td>
<td>95</td>
<td>643</td>
</tr>
<tr>
<td>Hearing</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Limitation</td>
<td>95</td>
<td>644</td>
</tr>
<tr>
<td>Erroneous</td>
<td>95</td>
<td>643</td>
</tr>
<tr>
<td>Petition</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Appeal</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Decision of court</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td>Remedy exclusive</td>
<td>95</td>
<td>643</td>
</tr>
<tr>
<td>Requisition</td>
<td>95</td>
<td>642</td>
</tr>
<tr>
<td><strong>Penalties, generally</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attempts to defeat or evade tax</td>
<td>95</td>
<td>652</td>
</tr>
<tr>
<td>Collection of</td>
<td>95</td>
<td>653</td>
</tr>
<tr>
<td>Failure to collect, account for and pay over tax</td>
<td>95</td>
<td>652</td>
</tr>
<tr>
<td>Fraudulent claim for refund or credit</td>
<td>95</td>
<td>653</td>
</tr>
<tr>
<td>Fraudulent statement, failure to furnish statement to employees</td>
<td>95</td>
<td>653</td>
</tr>
</tbody>
</table>
INDEX

TAXATION—(continued): Ch. Page

Personal income tax 95

Deduction and withholding of tax

Actions by employees against employer prohibited 693

Liability of employer 693

General procedure and administration 693

Meaning of terms

Updating 720

Procedure and administration

Effective date of article 95

Modification 653

Severability of provisions of article 654

Reassessment

Hearing 95

Notice 634

Petition 634

Regulations and forms

Prescribed by tax commissioner 95

Promulgation of rules and regulations by tax commissioner 626

Returns

Failure to file

Authority of commissioner to make return from information available 95

Mathematical error

Correction of and notice to taxpayer by commissioner 95

Returns without remittance

When full payment not made

Collection of balance due 632

Secrecy 628

Violation

Penalty 95

Waiver 629

Timely filing and paying 630, 631

Service of notice

Manner of service of notice upon taxpayer 95

Soft drinks tax

General procedure and administration 95

Payment

Additional penalties for late filing or payment 95

Waiver by commissioner 691

Penalties for violation of article 692

Syrups, soft drink

Seizure and sale of, by commissioner, upon which no tax paid ...

Disposition of proceeds 95

Notice of sale 692

Subpoena and subpoena duces tecum

Issuance by tax commissioner 95

Tax relief for elderly homeowners and renters

Claim for relief

Denial 95

Excessive

Denial, amount 95

Fraudulent

Penalty 696

Hearing

Appeal 697

Petition 697

Recovery of paid claim by assessment 95

96
### INDEX

<table>
<thead>
<tr>
<th>TAXATION—(continued):</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collection of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure of corporation to comply</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Revocation of business permit by Secretary of State</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Hearing</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Notice</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Failure of retailer to comply</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Cancellation of business franchise certificate</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>by commissioner</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Hearing</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Notice</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Examination by commissioner</td>
<td>95</td>
<td>683</td>
</tr>
<tr>
<td>Keeping and preservation by retailer</td>
<td>95</td>
<td>683</td>
</tr>
<tr>
<td>Out-of-state records</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>Procedure for examination</td>
<td>95</td>
<td>684</td>
</tr>
<tr>
<td>General procedure and administration</td>
<td>95</td>
<td>685</td>
</tr>
<tr>
<td>Payment of tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bond to secure payment</td>
<td>95</td>
<td>682</td>
</tr>
<tr>
<td>Securities in lieu of bond</td>
<td>95</td>
<td>683</td>
</tr>
<tr>
<td>Sale to recover tax</td>
<td>95</td>
<td>683</td>
</tr>
</tbody>
</table>

| TAYLOR COUNTY:                                                                        |     |      |
| County commission                                                                     |     |      |
| Commissioners                                                                         |     |      |
| Election                                                                               | 112 | 807  |
| Terms                                                                                  | 112 | 807  |
| Exception                                                                              | 112 | 807  |
| Composition                                                                            | 112 | 806  |
| Reformation, alteration and modification of                                           | 112 | 806  |
| Legislative findings                                                                  | 112 | 806  |
| Submission of question to voters                                                      | 112 | 807  |

| TEACHERS:                                                                             |     |      |
| See Schools.                                                                          |     |      |
| See State Teachers Retirement System                                                   |     |      |

| TRESPASS:                                                                             | 32  | 198  |
| Definitions                                                                           |     |      |
| Property, generally                                                                    |     |      |
| Damage caused during willful trespass                                                  | 32  | 202  |
| Exception                                                                             | 32  | 202  |
| Liability                                                                             | 32  | 202  |
| Property other than structure or conveyance                                           |     |      |
| Defiance of order to vacate premises                                                  | 32  | 201  |
| Penalty                                                                               | 32  | 201  |
| Entry in or remaining on unlawful premises                                            | 32  | 201  |
| Penalty                                                                               | 32  | 201  |
| Presence upon premises, carrying weapon                                               |     |      |
| With unlawful or felonious intent                                                    | 32  | 201  |
| Penalty                                                                               | 32  | 202  |
| Structure or conveyance                                                               |     |      |
| Entry in, or upon or under unlawful                                                   | 32  | 200  |
| Penalty                                                                               | 32  | 200  |
| Presence in, carrying weapon                                                         |     |      |
| With unlawful or felonious intent                                                    | 32  | 201  |
| Penalty                                                                               | 32  | 201  |

| TUBERCULOSIS:                                                                         | 51  | 304  |
| Detection                                                                             |     |      |
| Mobile testing facilities                                                             | 51  | 304  |
| Program for detection                                                                 | 51  | 304  |
| Established                                                                           | 51  | 304  |
## INDEX

### USE TAX:
See Taxation.

### VETERANS:
See State Teachers Retirement System.

### UNEMPLOYMENT COMPENSATION:

#### Benefits

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification</td>
<td>106</td>
<td>751</td>
</tr>
<tr>
<td>Determination by commissioner</td>
<td>106</td>
<td>751</td>
</tr>
<tr>
<td>Failure to apply for work</td>
<td>106</td>
<td>753</td>
</tr>
</tbody>
</table>

#### Governmental entities

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing benefits paid to employees</td>
<td>106</td>
<td>746</td>
</tr>
<tr>
<td>Liability for payment</td>
<td>106</td>
<td>747</td>
</tr>
<tr>
<td>Labor disputes, disqualification for benefits</td>
<td>106</td>
<td>753</td>
</tr>
<tr>
<td>Misconduct, disqualification for benefits</td>
<td>106</td>
<td>752</td>
</tr>
<tr>
<td>Nonprofit organizations, state hospitals, educational institutions, etc.</td>
<td>106</td>
<td>763</td>
</tr>
<tr>
<td>Payment of benefits</td>
<td>106</td>
<td>763</td>
</tr>
<tr>
<td>Exception</td>
<td>106</td>
<td>763</td>
</tr>
</tbody>
</table>

#### Calendar quarter defined

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim procedure</td>
<td>106</td>
<td>727</td>
</tr>
</tbody>
</table>

#### Claim procedure

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal and error</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal from deputy's decision</td>
<td>106</td>
<td>768</td>
</tr>
<tr>
<td>Hearing</td>
<td>106</td>
<td>768</td>
</tr>
<tr>
<td>Notice</td>
<td>106</td>
<td>768</td>
</tr>
<tr>
<td>Notice of decision of appeal tribunal</td>
<td>106</td>
<td>769</td>
</tr>
</tbody>
</table>

#### Commissioner of unemployment security defined

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Accounts

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credits to employers</td>
<td>106</td>
<td>748</td>
</tr>
</tbody>
</table>

#### Employers

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of benefits charged against their accounts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Classification by commissioner</td>
<td>106</td>
<td>749</td>
</tr>
<tr>
<td>Joint accounts</td>
<td>106</td>
<td>750</td>
</tr>
<tr>
<td>Regulations prescribed by commissioner</td>
<td>106</td>
<td>750</td>
</tr>
<tr>
<td>State and local government employers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authority to enter into</td>
<td>106</td>
<td>750</td>
</tr>
<tr>
<td>Separate account for each employer</td>
<td>106</td>
<td>748</td>
</tr>
<tr>
<td>Maintained by commissioner</td>
<td>106</td>
<td>748</td>
</tr>
<tr>
<td>Termination</td>
<td>106</td>
<td>748</td>
</tr>
</tbody>
</table>

#### Total unemployment

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular and extended</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Definitions

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits charged to last employer’s account</td>
<td>106</td>
<td>749</td>
</tr>
</tbody>
</table>

#### Employee eligibility

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Base period defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Benefit year defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Defined</td>
<td>106</td>
<td>727</td>
</tr>
</tbody>
</table>

#### Employer coverage and responsibility

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base period employer defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Computation date defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Definition of employer</td>
<td>106</td>
<td>728</td>
</tr>
</tbody>
</table>

#### Payroll

<table>
<thead>
<tr>
<th>Description</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual payroll defined</td>
<td>106</td>
<td>726</td>
</tr>
<tr>
<td>Average annual payroll defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Previously uncovered services</td>
<td>106</td>
<td>750</td>
</tr>
<tr>
<td>INDEX</td>
<td>875</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>UNEMPLOYMENT COMPENSATION—(continued):</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>Employer coverage and responsibility—(continued):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unemployment compensation fund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributions made by employer</td>
<td>106</td>
<td>747</td>
</tr>
<tr>
<td>Rate</td>
<td>106</td>
<td>747</td>
</tr>
<tr>
<td>Foreign corporations or businesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contributions, rate</td>
<td>106</td>
<td>748</td>
</tr>
<tr>
<td>Employer defined</td>
<td>106</td>
<td>728</td>
</tr>
<tr>
<td>Base period employer defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Employing unit defined</td>
<td>106</td>
<td>728</td>
</tr>
<tr>
<td>Employment defined</td>
<td>106</td>
<td>730, 735</td>
</tr>
<tr>
<td>Meaning of separated from employment</td>
<td>106</td>
<td>741</td>
</tr>
<tr>
<td>Employment office defined</td>
<td>106</td>
<td>740</td>
</tr>
<tr>
<td>Extended benefits program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definitions</td>
<td>106</td>
<td>764</td>
</tr>
<tr>
<td>Exhaustee defined</td>
<td>106</td>
<td>767</td>
</tr>
<tr>
<td>Extended benefit period defined</td>
<td>106</td>
<td>764</td>
</tr>
<tr>
<td>Funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration fund defined</td>
<td>106</td>
<td>726</td>
</tr>
<tr>
<td>Defined</td>
<td>106</td>
<td>740</td>
</tr>
<tr>
<td>Hospital defined</td>
<td>106</td>
<td>740</td>
</tr>
<tr>
<td>Institution of higher education defined</td>
<td>106</td>
<td>741</td>
</tr>
<tr>
<td>Payments defined</td>
<td>106</td>
<td>741</td>
</tr>
<tr>
<td>Previously uncovered services defined</td>
<td>106</td>
<td>750</td>
</tr>
<tr>
<td>Purpose of chapter</td>
<td>106</td>
<td>725</td>
</tr>
<tr>
<td>Total and partial unemployment defined</td>
<td>106</td>
<td>741</td>
</tr>
<tr>
<td>Wages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Base period wages defined</td>
<td>106</td>
<td>727</td>
</tr>
<tr>
<td>Defined</td>
<td>106</td>
<td>742</td>
</tr>
<tr>
<td>Week defined</td>
<td>106</td>
<td>746</td>
</tr>
<tr>
<td>Year defined</td>
<td>106</td>
<td>746</td>
</tr>
<tr>
<td>VITAL STATISTICS:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Allen born children</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Birth certificates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance upon adoption</td>
<td>49</td>
<td>301</td>
</tr>
<tr>
<td>WAGE AND HOUR LAW:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conservation officers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusion from wage and hour law</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Legislative findings</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Supplemental pay in lieu of overtime</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Certification by director</td>
<td>82</td>
<td>505</td>
</tr>
<tr>
<td>Limitation</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>Work week</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promulgation of rule establishing by director</td>
<td>82</td>
<td>504</td>
</tr>
<tr>
<td>WATER POLLUTON CONTROL ACT:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abatement and control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Election to stop operation</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Orders</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Remedial action, chief to take</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Service of orders</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Stopping or preventing discharges or deposits</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Actions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injunctive relief</td>
<td>80</td>
<td>499</td>
</tr>
<tr>
<td>Judicial review</td>
<td>80</td>
<td>498</td>
</tr>
<tr>
<td>Activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>80</td>
<td>479</td>
</tr>
<tr>
<td>Standards</td>
<td>80</td>
<td>483</td>
</tr>
</tbody>
</table>
### WATER POLLUTION CONTROL ACT—(continued):

<table>
<thead>
<tr>
<th>Section</th>
<th>Ch.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal and error</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abatement and control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice of right to appeal from orders of chief</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Appeal to water resources board</td>
<td>80</td>
<td>495</td>
</tr>
<tr>
<td>Denial of application for permit</td>
<td>80</td>
<td>490</td>
</tr>
<tr>
<td>Revocation or suspension of permit</td>
<td>80</td>
<td>491</td>
</tr>
<tr>
<td>Attorney general</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions for appeal proceedings</td>
<td>80</td>
<td>499</td>
</tr>
<tr>
<td>Legal services for chief of board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Actions for injunctive relief</td>
<td>80</td>
<td>501</td>
</tr>
<tr>
<td>Legal services for chief of board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Injunctive proceedings</td>
<td>80</td>
<td>500</td>
</tr>
<tr>
<td>Representation of chief of department in appeals</td>
<td>80</td>
<td>497</td>
</tr>
<tr>
<td>Chief of division of water resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal to water resources board</td>
<td>80</td>
<td>495</td>
</tr>
<tr>
<td>Duties generally</td>
<td>80</td>
<td>480</td>
</tr>
<tr>
<td>Orders to stop or prevent discharges or deposits</td>
<td>80</td>
<td>492</td>
</tr>
<tr>
<td>Powers generally</td>
<td>80</td>
<td>480</td>
</tr>
<tr>
<td>Remedial action</td>
<td>80</td>
<td>481</td>
</tr>
<tr>
<td>Civil penalties</td>
<td>80</td>
<td>499</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>80</td>
<td>501</td>
</tr>
<tr>
<td>Declaration of policy</td>
<td>80</td>
<td>476</td>
</tr>
<tr>
<td>Definitions</td>
<td>80</td>
<td>476</td>
</tr>
<tr>
<td>Fees, permits</td>
<td>80</td>
<td>488</td>
</tr>
<tr>
<td>Fines, penalties and forfeitures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil penalties</td>
<td>80</td>
<td>499</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>80</td>
<td>501</td>
</tr>
<tr>
<td>Hearing examiners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Water resources board authorized to hire</td>
<td>80</td>
<td>483</td>
</tr>
<tr>
<td>Injunctions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compelling compliance with rules, permits or orders</td>
<td>80</td>
<td>491</td>
</tr>
<tr>
<td>Inspections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>After issuance of permit</td>
<td>80</td>
<td>491</td>
</tr>
<tr>
<td>General powers and duties of chief of division and board</td>
<td>80</td>
<td>491</td>
</tr>
<tr>
<td>Judicial review</td>
<td>80</td>
<td>498</td>
</tr>
<tr>
<td>Mines and minerals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Activities prohibited without permit</td>
<td>80</td>
<td>486</td>
</tr>
<tr>
<td>When permits required</td>
<td>80</td>
<td>486</td>
</tr>
<tr>
<td>Notices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abatement and control</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orders of chief of division of water resources</td>
<td>80</td>
<td>493</td>
</tr>
<tr>
<td>Notice of right to appeal from orders of chief</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal from chief of water resources board</td>
<td>80</td>
<td>495</td>
</tr>
<tr>
<td>Denial of permit</td>
<td>80</td>
<td>490</td>
</tr>
<tr>
<td>Revocation or suspension of permit</td>
<td>80</td>
<td>491</td>
</tr>
<tr>
<td>Penalties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil penalties</td>
<td>80</td>
<td>499</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>80</td>
<td>501</td>
</tr>
<tr>
<td>Permits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Activities prohibited without permit</td>
<td>80</td>
<td>486</td>
</tr>
<tr>
<td>Appeals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notice of right to appeal</td>
<td>80</td>
<td>493</td>
</tr>
<tr>
<td>Application</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Form</td>
<td>80</td>
<td>488</td>
</tr>
<tr>
<td>Information required</td>
<td>80</td>
<td>488</td>
</tr>
<tr>
<td>Procedure</td>
<td>80</td>
<td>488</td>
</tr>
<tr>
<td>Compliance with permit, order to compel</td>
<td>80</td>
<td>491</td>
</tr>
</tbody>
</table>
**INDEX**

**WATER POLLUTION CONTROL ACT—(continued):**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permits—(continued):</td>
<td></td>
</tr>
<tr>
<td>Denial</td>
<td>80</td>
</tr>
<tr>
<td>Judicial review</td>
<td>80</td>
</tr>
<tr>
<td>Service of notice on applicant</td>
<td>80</td>
</tr>
<tr>
<td>Duty to take remedial action upon receipt of</td>
<td>80</td>
</tr>
<tr>
<td>Fees</td>
<td>80</td>
</tr>
<tr>
<td>Inspections</td>
<td>80</td>
</tr>
<tr>
<td>Issuance</td>
<td>80</td>
</tr>
<tr>
<td>Modification</td>
<td>80</td>
</tr>
<tr>
<td>Failure to comply with standards of water quality</td>
<td>80</td>
</tr>
<tr>
<td>and effluent limitations</td>
<td>80</td>
</tr>
<tr>
<td>Order to compel compliance with permit</td>
<td>80</td>
</tr>
<tr>
<td>Prior permits</td>
<td>80</td>
</tr>
<tr>
<td>Procedure</td>
<td>80</td>
</tr>
<tr>
<td>As to permit incident to remedial action</td>
<td>80</td>
</tr>
<tr>
<td>Duty to proceed with remedial action upon receipt of permit</td>
<td>80</td>
</tr>
<tr>
<td>Required</td>
<td>80</td>
</tr>
<tr>
<td>Revocation</td>
<td>80</td>
</tr>
<tr>
<td>Failure to comply with standards of water quality</td>
<td>80</td>
</tr>
<tr>
<td>and effluent limitations</td>
<td>80</td>
</tr>
<tr>
<td>Suspension</td>
<td>80</td>
</tr>
<tr>
<td>Term</td>
<td>80</td>
</tr>
<tr>
<td>Transfer</td>
<td>80</td>
</tr>
<tr>
<td>Violations</td>
<td>80</td>
</tr>
<tr>
<td>When permits required</td>
<td>80</td>
</tr>
<tr>
<td>Pollution</td>
<td></td>
</tr>
<tr>
<td>Powers and duties of chief of division and board with respect to</td>
<td>80</td>
</tr>
<tr>
<td>Powers generally</td>
<td>80</td>
</tr>
<tr>
<td>Prosecuting attorney</td>
<td>80</td>
</tr>
<tr>
<td>To represent chief of board in injunctive actions</td>
<td>80</td>
</tr>
<tr>
<td>To represent chief of board in appeal proceedings</td>
<td>80</td>
</tr>
<tr>
<td>Public service districts for water and sewerage services</td>
<td>80</td>
</tr>
<tr>
<td>Powers and duties of board in establishment</td>
<td>80</td>
</tr>
<tr>
<td>Rules and regulations</td>
<td></td>
</tr>
<tr>
<td>Powers and duties of chief of division and board</td>
<td>80</td>
</tr>
<tr>
<td>Standards of water quality and effluent limitations</td>
<td>80</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
</tr>
<tr>
<td>Civil penalties</td>
<td>80</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>80</td>
</tr>
<tr>
<td>Injunctive relief</td>
<td>80</td>
</tr>
<tr>
<td>Service of process</td>
<td></td>
</tr>
<tr>
<td>Abatement and control order of chief of division</td>
<td>80</td>
</tr>
<tr>
<td>Orders to compel compliance with permit</td>
<td>80</td>
</tr>
<tr>
<td>Orders to stop or prevent discharge or deposits or</td>
<td>80</td>
</tr>
<tr>
<td>take remedial action</td>
<td>80</td>
</tr>
<tr>
<td>Standards, water quality</td>
<td>80</td>
</tr>
<tr>
<td>Violations</td>
<td></td>
</tr>
<tr>
<td>Civil penalties</td>
<td>80</td>
</tr>
<tr>
<td>Criminal penalties</td>
<td>80</td>
</tr>
<tr>
<td>Water resources board, duties generally</td>
<td>80</td>
</tr>
<tr>
<td>Authority to hire hearing examiners</td>
<td>80</td>
</tr>
<tr>
<td>Wells</td>
<td></td>
</tr>
<tr>
<td>Activities prohibited without permit</td>
<td>80</td>
</tr>
<tr>
<td>Defined</td>
<td>80</td>
</tr>
<tr>
<td>Permits, when required</td>
<td>80</td>
</tr>
</tbody>
</table>

**WELFARE:**

See Child Welfare.
### WEST VIRGINIA OCCUPATIONAL THERAPY PRACTICE ACT:

See Professions and Occupations.

### WHEELING CREEK WATERSHED AND FLOOD PREVENTION COMPACT:

<table>
<thead>
<tr>
<th>Approved</th>
<th>Ch. 107</th>
<th>Page 770</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission</td>
<td>107</td>
<td>780</td>
</tr>
<tr>
<td>Accounts kept by</td>
<td>107</td>
<td>780</td>
</tr>
<tr>
<td>Budget</td>
<td>107</td>
<td>772</td>
</tr>
<tr>
<td>Submission by</td>
<td>107</td>
<td>772</td>
</tr>
<tr>
<td>To whom submitted</td>
<td>107</td>
<td>773</td>
</tr>
<tr>
<td>Composition</td>
<td>107</td>
<td>773</td>
</tr>
<tr>
<td>Created</td>
<td>107</td>
<td>781</td>
</tr>
<tr>
<td>Organization</td>
<td>107</td>
<td>770</td>
</tr>
<tr>
<td>Powers and duties</td>
<td>107</td>
<td>781</td>
</tr>
<tr>
<td>Property, real and personal</td>
<td>107</td>
<td>772</td>
</tr>
<tr>
<td>When commission authorized to dispose of</td>
<td>107</td>
<td>780</td>
</tr>
<tr>
<td>Recitation of reasons for</td>
<td>107</td>
<td>780</td>
</tr>
<tr>
<td>District</td>
<td>107</td>
<td>780</td>
</tr>
<tr>
<td>Created</td>
<td>107</td>
<td>772</td>
</tr>
<tr>
<td>Exempt from taxes and fees</td>
<td>107</td>
<td>780</td>
</tr>
<tr>
<td>Effective date of compact</td>
<td>107</td>
<td>781</td>
</tr>
</tbody>
</table>

### WORKMEN’S COMPENSATION:

<table>
<thead>
<tr>
<th>Awards</th>
<th>Ch. 108</th>
<th>Page 799</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical examination for</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Reimbursement of expenses for</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Time limitation on</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Commissioner</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Modification of findings by</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Power and jurisdiction continuous</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Disability and death benefits</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Awards paid to claimant’s dependents</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Exception</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Paid in installments</td>
<td>108</td>
<td>798</td>
</tr>
<tr>
<td>Death benefits</td>
<td>108</td>
<td>796</td>
</tr>
<tr>
<td>Classification</td>
<td>108</td>
<td>797</td>
</tr>
<tr>
<td>Dependent defined</td>
<td>108</td>
<td>797</td>
</tr>
<tr>
<td>Disability benefits</td>
<td>108</td>
<td>786</td>
</tr>
<tr>
<td>Classification of disability benefits</td>
<td>108</td>
<td>783</td>
</tr>
<tr>
<td>For first three days after injury</td>
<td>108</td>
<td>783</td>
</tr>
<tr>
<td>Maximum amount</td>
<td>108</td>
<td>786</td>
</tr>
<tr>
<td>Permanent disability</td>
<td>108</td>
<td>787</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
<td>792</td>
</tr>
<tr>
<td>Single injury</td>
<td>108</td>
<td>787</td>
</tr>
<tr>
<td>Table of awards</td>
<td>108</td>
<td>788</td>
</tr>
<tr>
<td>Temporary total disability</td>
<td>108</td>
<td>786</td>
</tr>
<tr>
<td>Occupational pneumoconiosis</td>
<td>108</td>
<td>786</td>
</tr>
<tr>
<td>Benefits paid for</td>
<td>108</td>
<td>792</td>
</tr>
<tr>
<td>Board</td>
<td>108</td>
<td>794</td>
</tr>
<tr>
<td>Report of findings to commissioner</td>
<td>108</td>
<td>795</td>
</tr>
<tr>
<td>Contents</td>
<td>108</td>
<td>795</td>
</tr>
<tr>
<td>Objections</td>
<td>108</td>
<td>796</td>
</tr>
<tr>
<td>Hearing</td>
<td>108</td>
<td>796</td>
</tr>
<tr>
<td>Notice to board</td>
<td>108</td>
<td>795</td>
</tr>
<tr>
<td>Presumption</td>
<td>108</td>
<td>795</td>
</tr>
<tr>
<td>Not conclusive</td>
<td>108</td>
<td>795</td>
</tr>
<tr>
<td>Temporary total disability</td>
<td>108</td>
<td>785</td>
</tr>
<tr>
<td>Objections to findings of commissioner</td>
<td>108</td>
<td>783</td>
</tr>
<tr>
<td>Payment of benefits directly to claimant</td>
<td>108</td>
<td>783</td>
</tr>
<tr>
<td>Total disability</td>
<td>108</td>
<td>786</td>
</tr>
<tr>
<td>Classification</td>
<td>108</td>
<td>786</td>
</tr>
<tr>
<td>Topic</td>
<td>Ch.</td>
<td>Page</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-----</td>
<td>------</td>
</tr>
<tr>
<td>WORKMEN'S COMPENSATION—(continued)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disabled Workmen's Relief Fund</td>
<td>799</td>
<td></td>
</tr>
<tr>
<td>Composition</td>
<td>799</td>
<td></td>
</tr>
<tr>
<td>Created</td>
<td>800</td>
<td></td>
</tr>
<tr>
<td>Custodian</td>
<td>799</td>
<td></td>
</tr>
<tr>
<td>How designated</td>
<td>800</td>
<td></td>
</tr>
<tr>
<td>To whom benefits paid</td>
<td>799</td>
<td></td>
</tr>
<tr>
<td>Discriminatory practices prohibited</td>
<td>800</td>
<td></td>
</tr>
<tr>
<td>Medical benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment</td>
<td>783</td>
<td></td>
</tr>
<tr>
<td>Medical information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative findings</td>
<td>793</td>
<td></td>
</tr>
<tr>
<td>Release of, to employer</td>
<td>794</td>
<td></td>
</tr>
<tr>
<td>Agreement by filing of application for benefits</td>
<td>794</td>
<td></td>
</tr>
<tr>
<td>WYOMING COUNTY:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>County commission</td>
<td>808</td>
<td></td>
</tr>
<tr>
<td>Authorized to convey land to Little Huff Creek Health</td>
<td>808</td>
<td></td>
</tr>
</tbody>
</table>