

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1979
First Extraordinary Session, 1979

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C-641

FOREWORD

This volume contains the Acts of the First Regular Session and the First Extraordinary Session of the 64th Legislature.

Regular Session, 1979

The first regular session of the 64th Legislature convened on January 10, 1979, and, following the certification of the election of members, held at the general election on the 7th day of November, 1979, the election of officers of the two houses, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on matters incident to organization, proceeded to the business of the session.

Bills totaling 1,408 were introduced in the two houses during the session (842 House and 566 Senate). The Legislature passed 124 bills, 68 House and 56 Senate. The Governor approved 122 bills and vetoed two (S. B. 280 and S. B. 371).

There were 86 Concurrent Resolutions introduced during the session, 52 House and 34 Senate, of which nine house and five Senate were adopted by both houses. A total of 55 Joint Resolutions were introduced proposing amendments to the Constitution of the State, 37 House and 18 Senate, of which none were adopted. The House had 36 House Resolutions and the Senate, 18 Senate Resolutions, of which 22 House and 13 Senate were adopted by their respective houses.

Sixty House Bills failed passage by the Senate and 46 Senate Bills failed passage by the House. Seven bills died in conference, five House and two Senate.

The Constitutional expiration date of the Session was midnight, March 10, 1979. However, the Session was extended by Proclamation of the Governor for consideration of the annual Budget Bill, up to and including March 13, 1979. The Legislature failed to pass the Budget and adjourned *sine die* on Monday, March 12, 1979.

First Extraordinary Session, 1979

The first extraordinary session of the 64th Legislature was convened by the Governor on April 9, 1979, for the sole purpose of

consideration of the annual Budget and supplemental appropriation bills. Following passage of the Budget Bill (H. B. 101), *sine die* adjournment was taken on April 11, 1979.

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, 1979

GENERAL LAWS

ACTIONS AND SUITS

Chapter	Page
1. Limitations on notice of lis pendens	1

AIR POLLUTION

2. Bringing the West Virginia Air Pollution Control Law into Accord with the Federal Clean Air Act	2
3. Repealing the Interstate Compact On Air Pollution	11

ANIMALS

4. Providing a More Specific Definition of Cruelty to Animals	12
---	----

APPROPRIATIONS

Supplementary

5. Board of Regents (Control	13
6. Department of Public Safety	14
7. Department of Welfare	15

Supplementing, Amending and Transferring Amounts Between Items of Prior Appropriations

8. Department of Health	17
9. Department of Highways from State Road Fund	18
10. West Virginia Industrial School for Boys	19
11. West Virginia Penitentiary ..	20

BONDS

12. Permitting Bond Issuers to Withdraw Additional Funds Deposited with the Municipal Bond Commission	21
--	----

CHILD WELFARE

13. Assignment of Support to Department of Welfare	23
14. Juvenile Offender Rehabilitation Act	26

TABLE OF CONTENTS

Chapter	Page
CLAIMS AGAINST THE STATE	
15. Compensation of Judges of the Court of Claims	33
16. Payment of Certain Claims Against Various State Departments, Boards, Offices and Agencies	34
17. Payment of Claims Against the Board of Regents, Department of Corrections, Department of Health, Department of Public Safety and Secretary of State	40
CONSUMER CREDIT AND PROTECTION	
18. Loan Finance Charge for Supervised Lenders	41
19. Applicability of the Consumer Credit and Protection Act with Respect to Certain Consumer Transactions Involving Revolving Charge and Loan Accounts	56
CONTROLLED SUBSTANCES	
20. Including Pentazocine in Schedule IV	57
CORPORATIONS	
21. Admission of and Acts Permitted Done by Foreign Corporations without Certificate of Authority	59
CORRECTIONS	
22. Commutation of Sentence for Good Conduct	62
COUNTY COMMISSIONS AND OFFICERS	
23. Authority of County Commissions to Grant Funds for Nutritional Programs Operated by Nonprofit Legal Entities	65
24. Mileage Allowance for County Officials, Assistants, Deputies and Employees	66
25. Authorizing the Transfer of Certain Property for Recreational Development	67
COURTS AND THEIR OFFICERS	
26. Salaries of Justices and Judges	68
27. Additional Judge in the Tenth and Eleventh Judicial Circuits	70
CREDIT UNIONS	
28. Annual and Special Meetings of State-chartered Credit Unions	75
29. Intervals and Periods Within Which Credit Union Boards of Directors May Declare Dividends to be Paid	76
CRIMES AND THEIR PUNISHMENT	
30. Form and Notice to Drawer of Worthless Checks	77
31. Penalties for the Use of Minors in the Filming of Sexually Explicit Conduct and Penalties for the Distribution or Exhibition of the Same	80
32. Form of Indictment for Burglary with Intent to Commit Sexual Assault	82

TABLE OF CONTENTS

vii

Chapter	DAYLIGHT SAVING TIME	Page
33.	Bringing West Virginia Daylight Saving Time Law into Compliance with Federal Law	84
DOMESTIC RELATIONS		
34.	Protection from Abuse for Household Members	85
EDUCATION		
35.	County Superintendents and Boards of Education Permitted to Maintain an Office Within Five Miles of the County Seat	90
36.	Public Hearing to be Held on the Preliminary Operating Budget of County Boards of Education	91
37.	Salary Increase for Professional Educators and Establishing an Instructional and Employment Term	93
38.	Maximum Teacher-Pupil Ratio	97
39.	Authorizing the Board of Regents to Enter Into Reciprocal Agreements With Other States Concerning Scholarships	98
40.	Appointment by the Board of Regents of Security Officers to Assist Local Peace Officers at State-owned Colleges and Universities	100
41.	Required Notice of Retention or Nonretention to Probationary Faculty Members of Colleges and Universities and Hearings Thereon by the Board of Regents	102
42.	Salary Increments Paid to Principals for the Supervision of Teachers	104
43.	Salary Increase for School Auxiliary and Service Personnel	105
44.	Permitting Teachers and Other Full-time School Personnel to Use Three Days of Annual Leave, Not Consecutively Without Permission, Without Regard to the Cause of Absence	108
45.	Penalties for Assaults by Pupils Upon Teachers or Other School Personnel	110
ELECTIONS		
46.	Entitling Paupers to Vote	115
ELECTROLOGY		
47.	Practice of Electrology or Electrolysis and Regulation by the State Board of Health	116
EMBALMERS AND FUNERAL DIRECTORS		
48.	Permitting Embalmers and Funeral Directors to Enucleate an Eye or Eyes for the Purpose of Completing an Anatomical Gift	117
EMERGENCY MEDICAL SERVICES		
49.	Permitting Nurses to Accompany Patients Being Transported in Ambulances	121
EMINENT DOMAIN		
50.	Public Uses for Which Private Property Can Be Taken for Underground Storage Facilities	124

Chapter	FINANCE AND ADMINISTRATION	Page
51.	Removing Limitations on the Salary of the Director of the Purchasing Division, Department of Finance and Administration	128
GARNISHMENT		
52.	Amount by Which a Suggestee Execution Shall Issue Against a Judgment Debtor	129
HANDICAPPED CHILDREN		
53.	Advisory Board of Physicians to Oversee Services to Handicapped Children	132
HEALTH		
54.	Promulgation of Rules and Regulations by the State Board of Health and Restrictions Thereon as to Certain Land Development	135
55.	Expanding the List of Vaccines and Free Distribution by the Director of Health to County and Municipal Health Officers	138
56.	Use of Marihuana for Treatment of Glaucoma and Cancer	139
57.	Health Care Facility Financial Disclosure	142
HORSE AND DOG RACING		
58.	Local Option Election on Sunday Racing	148
HOUSING DEVELOPMENT FUND		
59.	Authorized Limit on Borrowing of the West Virginia Housing Development Fund	151
INSTITUTIONAL FUNDS		
60.	Uniform Management of Institutional Funds Act	152
INSURANCE		
61.	Motor Vehicle Liability Insurance and Proof of Financial Responsibility	157
62.	Examination of Insurers, Agents, Brokers and Solicitors, etc.	168
63.	Nonrenewal of Automobile Liability Insurance Policies in Effect Two Consecutive Years or Longer	172
64.	Increasing Amount of Debtors Life Insurance	174
INVESTMENTS		
65.	Investment of State Funds	176
LEGISLATURE		
66.	Authorization by the Joint Committee on Government and Finance of Interim Meetings of Legislative Committees and Commissions	190
67.	Pre-filing of Bills by Members and Members-elect	194
68.	Recommendations of the Citizens' Legislative Compensation Commission	195

TABLE OF CONTENTS

ix

MENTALLY ILL PERSONS

Chapter	Page
69. Definitions and Legal Proceedings for Involuntary Hospitalization of Mentally Ill Persons	203

MINES AND MINERALS

70. Assistance to Small Coal Operators by the Directors of the Department of Mines and Natural Resources	222
71. Expanding Duties of the Director of Natural Resources and Reclamation Commission as to Surface Mining Rules and Regulations	228
72. Compensation and Expenses of Members of The Board of Coal Mine Health and Safety	235

MOBILE HOMES

73. Requiring Installation of Smoke Detection Systems in Mobile Homes	236
---	-----

MOTION PICTURES

74. Motion Picture Fair Competition Act	239
---	-----

MOTORBOATS

75. Transferring Authority for Motorboat Registration to the Department of Motor Vehicles	243
---	-----

MOTOR VEHICLES

76. Removing Requirement that Truck Vehicle Gross Weight Be Stenciled on the Side of Such Vehicles	249
77. Use of Red Flashing Warning Lights on Ambulances and Restricting Tow Trucks and Wreckers to the Use of Amber or Yellow Flashing Warning Lights	250
78. Required Proof of Motor Vehicle Financial Responsibility Upon Certain Convictions	252

MUNICIPALITIES

79. Class III Cities Permitted to Establish and Maintain an Employees Retirement and Benefit Fund	253
80. Requirements for Meetings of Planning Commissions	254

NATURAL RESOURCES

81. Water Purity and Quality Standards	255
--	-----

NURSING HOMES

82. Definitions Under the Nursing and Personal Care Home Law	256
--	-----

OIL AND GAS

83. Creation of Office of Oil and Gas Within the Department of Mines	258
--	-----

TABLE OF CONTENTS

Chapter	OIL AND GAS (Continued)	Page
84.	Cancellation of Oil and Gas Leases for Nonpayment of Delay Rental	265
OPEN GOVERNMENTAL PROCEEDINGS		
85.	Enforcement of Open Governmental Proceedings by Injunction, Voidability of Certain Actions and Decisions in Violation of Article	268
PARKS AND RECREATION		
86.	Time Limitation on Private Contracts for Operation of Commissions, etc., Within State Parks	269
PROBATION AND PAROLE		
87.	Eligibility and Ineligibility for Probation or Parole for Certain Offenses	271
PROFESSIONS AND OCCUPATIONS		
88.	Liability limitations for Peer Review and Professional Standards Review Committees	276
89.	Extending Time Within Which Physicians May Practice Temporarily in This State	277
90.	Organization of Accounting Corporations	279
91.	Clarifying that Partnerships, Corporations, etc., May Engage in the Practice of Architecture	282
92.	Requirements to Practice Chiropractic	283
93.	Creating a State Board of Registration for Sanitarians	285
PUBLIC EMPLOYEES RETIREMENT		
94.	Amount of Temporary Compensation a Retirant May Receive	293
PUBLIC LAND CORPORATION		
95.	Transferring Title in a Portion of Washington-Carver Camp to the Department of Natural Resources	294
PUBLIC SAFETY		
96.	Salary Increase for Members of the Department of Public Safety	298
97.	Appeal Procedures for Members of the Department of Public Safety	301
PUBLIC SERVICE COMMISSION		
98.	Reorganization of the Public Service Commission	305
99.	Establishing a Statewide Emergency Telephone System	345
REGULATION OF TRADE		
100.	Certain Business Debts Exempt from Usury Laws	348
101.	Acceptance by Manufacturers and Distributors of Successor Dealers	350
SECRETARY OF STATE		
102.	Service of Process on Certain Nonresidents	353

TABLE OF CONTENTS

xi

SOUTHERN STATES ENERGY COMPACT	
Chapter	Page
103. Changing the Name of the Southern States Nuclear Compact to the Southern States Energy Compact	371
SUNSET LAW	
104. Termination of Governmental Entities or Programs	382
TAXATION	
105. Required Notice of Increased Ad Valorem Property Taxation, Review by County Commissions	392
106. Assessment of Mobile Homes	395
107. Defining Terms Under the West Virginia Tax Procedure and Administration Act	398
108. Reduction of the Sales Tax on Food	400
109. Consolidated Returns to Persons Operating Two or More Places of Business	408
110. Persons Subject to Soft Drinks Tax to File Monthly Reports	409
111. Definition and Meaning of Personal Income Tax Terms	410
112. Definition and Meaning of Corporation Net Income Tax Terms	411
113. Time in Which a Purchaser of Nonexistent or Erroneously Assessed Land May Obtain a Refund of the Purchase Price	414
TRAFFIC OFFENSES	
114. Negligent Homicide and Reckless Driving Offenses and Penalties Therefor	415
UNEMPLOYMENT COMPENSATION	
115. Definitions, Eligibility and Benefit Rates Under Unemployment Compensation	418
UNIFORM COMMERCIAL CODE	
116. Updating the Uniform Commercial Code	447
VETERANS	
117. Establishing a State Cemetery for Veterans	519
VITAL STATISTICS	
118. Filing Place of Birth and Death Certificates	520
WAGES	
119. Deposit of Certain Governmental Employees' Wages Into Designated Accounts in Financial Institutions	524
WILLOW ISLAND	
120. Continuance of Governor's Commission on Willow Island	528

Chapter	WORKMEN'S COMPENSATION	Page
121.	Creating a Workmen's Compensation Advisory Board Payment of Disability Benefits, Monitoring of Claims, Physical and Vocational Rehabilitation and Creating a Disabled Workmen's Relief Fund	534
LOCAL AND SPECIAL LAWS		
Jefferson County		
122.	Authorizing the Jefferson County Board of Education to Convey Land to the Shepherdstown Day Care, Inc.	544
RESOLUTIONS		
(Only resolutions of general interest, adopted during the session, are included herein)		
CONCURRENT		
HCR 8.	Review of pension and retirement bills by the Legisla- tive Commission on Pensions and Retirements	547
HCR 9.	Expressing concern about the regulatory program under the Surface Mining and Reclamation Act of 1977	547
HCR 35.	Requesting the Congress to take necessary steps to prohibit dumping of foreign steel products in the United States	549
HCR 47.	Continuation of certain studies by the Joint Committee on Government and Finance	550
HCR 51.	Interim studies by the Joint Committee on Government and Finance	552
SCR 32.	Expressing concern and disapproval of the planned cutback of Amtrak Passenger Rail Service in West Virginia	554
SCR 33.	Urging the U. S. Environmental Protection Agency to take action to fully protect the rights of state coal producers to sell their coal to utility customers in Ohio	556
HOUSE		
HR 7.	Amending House Rule 95a, relating to fiscal notes	557
HR 20.	Amending House Rule No. 8, relating to a presiding officer in the absence of the Speaker	558
SENATE		
SR 11.	Urging the Commissioner of Highways to designate a portion of a new highway in Monongalia County as the "201st Memorial Way"	559

TABLE OF CONTENTS

xiii

First Extraordinary Session, 1979

APPROPRIATIONS

Chapter	Page
1. Annual Budget Bill, making appropriations of public money out of the Treasury for the fiscal year beginning July 1, 1979	561

RESOLUTIONS

(Only resolutions of general interest are listed)

CONCURRENT

SCR 1. Urging the Congress of the United States and the President of the United States to designate West Virginia as the site of the proposed experimental liquefaction plant ..	639
--	-----

HOUSE

HR 6. Directing the Committee on Rules, Committee on Finance and the Committee on the Judiciary to meet between the 1979 and 1980 regular sessions of the Legislature	640
---	-----

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1979

OFFICERS

Speaker—Clyde M. See, Jr., Moorefield

Speaker Pro Tem—Clarence C. Christian, Jr., Princeton

Clerk—C. A. Blankenship, Pineville

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

Doorkeeper—Dannie Wingo, Yukon

District	Name	Address
First	Gust G. Brenda, Jr. (D)	Weirton
	George P. Gvoyich (D)	Weirton
Second	Roy E. Givens (D)	Wellsburg
	Pamela Sue Shuman (D)	Wellsburg
Third	George W. Dober (R)	Wheeling
	John M. Karras (D)	Wheeling
	Arthur L. McKenzie (R)	Wheeling
	Paul J. Otte (R)	Wheeling
Fourth	Larry Wiedebusch (D)	Glen Dale
	Albert D. Yanni (D)	Glen Dale
Fifth	Joseph M. Ballouz (D)	New Martinsville
Sixth	Larry D. Swann (R)	West Union
Seventh	Sam White (R)	St. Marys
Eighth	Joseph P. Albright (D)	Parkersburg
	Keith Burdette (D)	Parkersburg
	George E. Farley (D)	Parkersburg
	Malcolm B. Loudon (R)	Parkersburg
	Donza T. Worden (D)	Parkersburg
Ninth	Lloyd Darrell Atkinson (R)	Reedy
Tenth	Bill Carmichael (R)	Ripley
	John H. Reed (R)	Hurricane
	Dan Shumate (D)	Ravenswood
	Jimmy Joe Wedge (R)	Pt. Pleasant
Eleventh	Robert C. Chambers (D)	Huntington
	Patricia O. Hartman (D)	Huntington
	Dorsey Ketchum (D)	Huntington
	Charles M. Polan, Jr. (D)	Huntington
	Evelyn E. Richards (R)	Huntington
	Forest Underwood (D)	Huntington
Twelfth	Burnie R. Crabtree (D)	Genoa
	Lucian Fry (D)	Wayne
Thirteenth	Irvine Damron (D)	Lenore
	R. Doyle Van Meter (D)	Williamson
Fourteenth	T. J. Scott (D)	Welch
	Booker T. Stephens (D)	Keystone
	Lacy Wright, Jr. (D)	Bradshaw
Fifteenth	Frank L. Blackwell (D)	Mullens
	Thomas G. Goodwin (D)	Seth
	Troy W. Hendricks (D)	Madison
Sixteenth	Sammy D. Dalton (D)	Harts
	Charles Gilliam (D)	Logan
	Thomas W. Mathis (D)	Logan
	Earl Ray Tomblin (D)	Chapmanville
Seventeenth	John W. Biddle (R)	Charleston
	Darrell E. Holmes (D)	Sissonville
	Thomas A. Knight (D)	Charleston
	Leo Kopelman (R)	East Bank
	Charlotte R. Lane (R)	Charleston
	Walter Price, III (R)	Charleston
	Samuel Rubin (R)	Charleston

HOUSE OF DELEGATES

XV

District	Name	Address
	Lyle Sattes (D)	Charleston
	Walton Shepherd (D)	Sissonville
	Roger W. Tompkins (D)	Charleston
	George B. Warner (R)	Charleston
	Mrs. Russell S. Wehrle (D)	Charleston
	John M. Wells (R)	Charleston
Eighteenth	Vernon Barley (D)	Bradley
	Sterling T. Lewis (D)	Shady Spring
	*Phyllis A. Presley (D)	Beckley
	William R. Wooton (D)	Beckley
Nineteenth	Donald Anello (D)	Bramwell
	C. C. Christian, Jr. (D)	Princeton
	Jack E. Holt (D)	Hinton
	W. Marion Shiflet (D)	Union
	Tony E. Whitlow (D)	Princeton
Twentieth	Betty D. Crookshanks (D)	Rupert
	Sarah L. Neal (D)	Rainelle
Twenty-first	Dave Fox (D)	Ansted
	Kim O'Neal (D)	Fayetteville
	Adam Toney (D)	Oak Hill
Twenty-second	Larry E. Tucker (D)	Summersville
	Robert L. Ward (D)	Cowen
Twenty-third	Robert H. Kidd (D)	Sutton
	Robert Reed (D)	Clay
Twenty-fourth	George E. Arnold (D)	Weston
Twenty-fifth	Michael D. Greer (R)	Salem
	John F. McCuskey (R)	Bridgeport
	Kenneth H. Riffle (D)	Bridgeport
	W. L. Vincent (D)	Shinnston
Twenty-sixth	Paul E. Prunty (R)	Fairmont
	William E. Shingleton (D)	Fairmont
	Benjamin N. Springston (R)	Fairmont
	Cody A. Starcher (D)	Fairmont
Twenty-seventh	Ralph Brown (D)	Aithurdale
	Tom Clark (R)	Morgantown
	Clyde H. Richey (D)	Morgantown
	Larry E. Schifano (D)	Morgantown
Twenty-eighth	James W. Teets (R)	Terra Alta
Twenty-ninth	E. E. Bryan (D)	Philippi
	Charles R. Shaffer (R)	Buckhannon
Thirtieth	J. E. Martin (D)	Elkins
	Jae Spears (D)	Elkins
Thirty-first	Clyde M. See, Jr. (D)	Moorefield
Thirty-second	Guy Ross Smith (D)	Davis
Thirty-third	Robert D. Harman (R)	Keyser
Thirty-fourth	William T. Milleson (D)	Springfield
Thirty-fifth	Joseph E. Caudle (D)	Martinsburg
	Terry T. Harden (D)	Berkeley Springs
	Clarence E. Martin, III (D)	Martinsburg
Thirty-sixth	James M. Moler (D)	Charles Town

*Appointed January 17, 1979, to fill the vacancy created by the resignation of the Honorable Ted T. Stacy.

(D) Democrats	74
(R) Republicans	26
Total	100

MEMBERS OF THE SENATE

REGULAR SESSION, 1979

OFFICERS

President—W. T. Brotherton, Jr., Charleston
President Pro Tem—Carl E. Gainer, Richwood
Clerk—J. C. Dillon, Jr., Hinton
Sergeant at Arms—John E. Howell, Charleston
Doorkeeper—E. L. Bevins, Williamson

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

* Elected in 1976. All others elected in 1978.

(D) Democrats	26
(R) Republicans	8
Total	34

**STANDING COMMITTEES OF THE
HOUSE OF DELEGATES**

1979

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Milleson (Vice Chairman of Agriculture), Ballouz (Chairman of Natural Resources), Worden (Vice Chairman of Natural Resources), Arnold, Brenda, Brown, Bryan, Damron, Fry, Goodwin, Harden, Hendricks, Reed (23rd Dist.), Richey, Shiflet, Smith, Underwood, Whitlow, Atkinson, Clark, Rubin, Shaffer, Springston and Swann.

Banking and Insurance

Shepherd (Chairman of Banking), Tomblin (Vice Chairman of Banking), Martin (35th Dist.) (Chairman of Insurance), Karras (Vice Chairman of Insurance), Anello, Bryan, Hartman, Holmes, Milleson, Moler, Schifano, Scott, Shiflet, Shingleton, Shumate, Toney, Tucker, Ward, Wright, Greer, Kopelman, McCuskey, Reed (10th Dist.), Shaffer and Warner.

Constitutional Revision

Wehrle (Chairman), Wooton (Vice Chairman), Ballouz, Caudle, Chambers, Dalton, Farley, Fox, Ketchum, Knight, Martin (30th Dist.), Martin (35th Dist.), Mathis, Neal, Shuman, Spears, Stephens, Tucker, Wright, Harman, Kopelman, McCuskey, Reed (10th Dist.), Warner and White.

Education

Sattes (Chairman), Richey (Vice Chairman), Ballouz, Barley, Blackwell, Burdette, Dalton, Fox, Fry, Givens, Goodwin, Hartman, Ketchum, Kidd, Moler, Shumate, Underwood, Worden, Yanni, Atkinson, Clark, Dober, Prunty, Springston and Warner.

Finance

Polan (Chairman), Farley (Vice Chairman), Anello, Brenda, Brown, Harden, Holmes, Karras, Lewis, Mathis, Milleson, Neal, Reed (23rd Dist.), Spears, Tomblin, Toney, Van Meter, Wehrle, Wright, Harman, Kopelman, McCuskey, Otte, Swann and Wells.

Government Organization

Shuman (Chairman), Whitlow (Vice Chairman), Burdette, Crabtree, Fox, Fry, Gvoyich, Hendricks, Holt, Knight, Moler, O'Neal, Presley, Schifano, Shumate, Vincent, Wiedebusch, Worden, Biddle, McKenzie, Price, Reed (10th Dist.), Richards, Rubin and Wedge.

Health and Welfare

Schifano (Chairman), Ketchum (Vice Chairman), Arnold, Ballouz, Caudle, Crookshanks, Gvoyich, Harden, Hartman, Knight, Lewis, Moler, Richey, Smith, Spears, Tomblin, Ward, Wehrle, Worden, Harman, Lane, Louden, McKenzie, Otte and Price.

Industry and Labor

Wiedebusch (Chairman), Hendricks (Vice Chairman), Blackwell, Caudle, Christian, Damron, Gilliam, Gvoyich, Holmes, Holt, Kidd, Knight, O'Neal, Presley, Riffle, Starcher, Underwood, Whitlow, Yanni, Atkinson, Biddle, Carmichael, Greer, Prunty and Richards.

Interstate Cooperation

Bryan (Chairman), Brenda, Christian, Gilliam, Scott, Harman and Swann.

Judiciary

Albright (Chairman), Tucker (Vice Chairman), Bryan, Caudle, Chambers, Christian, Crookshanks, Damron, Gilliam, Martin (30th Dist.), Martin (35th Dist.), Riffle, Scott, Shepherd, Shingleton, Starcher, Stephens, Ward, Wooton, Carmichael, Greer, Lane, Louden, Shaffer and White.

Political Subdivisions

Toney (Chairman), Yanni (Vice Chairman), Anello, Brown, Burdette, Fox, Fry, Hendricks, Ketchum, Lewis, Mathis, Richey, Shepherd, Shuman, Stephens, Van Meter, Vincent, Wiedebusch, Wooton, Biddle, Dober, Lane, Richards, Wells and White.

Roads and Transportation

Goodwin (Chairman), Gvoyich (Vice Chairman), Arnold, Barley, Blackwell, Chambers, Christian, Crabtree, Crookshanks, Dalton, Givens, Harden, Holt, Presley, Shumate, Smith, Starcher, Tomblin, Vincent, McKenzie, Price, Prunty, Rubin, Swann and Wedge.

Rules

See (Ex officio Chairman), Albright, Brenda, Mathis, Polan, Sattes, Shiflet, Tompkins, Tucker, Greer, Swann and Teets.

State and Federal Affairs

Scott (Chairman), Van Meter (Vice Chairman), Barley, Chambers, Crabtree, Dalton, Farley, Fry, Givens, Karras, Kidd, Martin (30th Dist.), O'Neal, Reed (23rd Dist.), Riffle, Shuman, Stephens, Underwood, Whitlow, Carmichael, Clark, Dober, Loudon, Springston and Wedge.

JOINT COMMITTEES

Enrolled Bills

Christian (Chairman), Holmes (Vice Chairman), Spears, Otte, and Wells.

Government and Finance

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

Joint Rules

See (Ex Officio Chairman), Tompkins 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**

See (Chairman), Sattes, Harman and Teets.

STANDING COMMITTEES OF THE SENATE

1979

Agriculture

Williams (Chairman), Oates (Vice Chairman), Baylor, Benson, Hamilton, Hanlon, McGraw, Steptoe, Susman, Jones and Shaw.

Banking and Insurance

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

Confirmations

Benson (Chairman), Galperin (Vice Chairman), Colombo, Davis, Hamilton, McGraw, Oates, Rogers, Tonkovich, Williams, Gilligan, Herndon and Kusic.

Education

Nelson (Chairman), Oates (Vice Chairman), Boettner, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Sharpe, Steptoe, Deem, Gilligan, Herndon and Jones.

Elections

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

Energy, Industry and Mining

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

Finance

Fanning (Chairman), Susman (Vice Chairman), Boettner, Colombo, Gainer, Grubb, Hanlon, McGraw, Oates, Rollins, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harman, Herndon and Hinkle.

Health

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

Interstate Cooperation

Gainer (Chairman), Moreland (Vice Chairman), Davis, Huffman, Nelson, Oates and Hinkle.

Judiciary

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

Labor

Davis (Chairman), Hamilton (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Tonkovich, Deem and Kusic.

Local Government

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

Military

Moreland (Chairman), McGraw (Vice Chairman), Baylor, Boettner, Colombo, Ward, Williams, Harman and Hinkle.

Natural Resources

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

Public Institutions

Sharpe (Chairman), Rollins (Vice Chairman), Colombo, Davis, Hamilton, Hanlon, Nelson, Oates, Tonkovich, Hinkle and Shaw.

Rules

Brotherton (Chairman *ex officio*), Fanning, Gainer, Nelson, Palumbo, Sharpe, Susman, Ward, Harman and Herndon.

Transportation

Steptoe (Chairman), Davis (Vice Chairman), Colombo, Gainer, Hamilton, Hanlon, Huffman, McGraw, Nelson, Palumbo, Sharpe, Tonkovich, Williams, Deem, Jones, Kusic and Shaw.

SENATE COMMITTEES

JOINT COMMITTEES

Enrolled Bills

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

Government and Finance

Brotherton (Chairman ex officio), Fanning, Palumbo, Sharpe, Ward, Gilligan and Harman.

Joint Rules

Brotherton (Chairman ex officio), Ward and Harman.

Legislative Rule-Making Review Committee

Stephoe (Chairman), Moreland, Rogers, Rollins, Herndon and Hinkle.

**PURCHASING PRACTICES AND PROCEDURES
COMMISSION**

Brotherton (Chairman), McGraw, Nelson, Gilligan and Jones.

LEGISLATURE OF WEST VIRGINIA

ACTS

REGULAR SESSION, 1979

CHAPTER 1

(Com. Sub. for H. B. 703—By Mr. Albright and Mr. Tompkins)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to limitations on constructive notice to any pendente lite purchaser or encumbrancer of real estate upon the filing for recordation of a memorandum or notice of a suit, action, attachment or other proceeding affecting such real estate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. LIS PENDENS.

§55-11-3. Limitations on notice of lis pendens.

1 Constructive notice of the pendency of a suit, action, attach-
2 ment or other proceeding, arising from the filing for recorda-
3 tion of a notice or memorandum in accordance with the pro-
4 visions of section two of this article, shall continue to operate
5 as constructive notice thereof to any pendente lite purchaser

6 or encumbrancer of the real estate affected, for a period of ten
7 years next after the date when such notice was filed for rec-
8 ordation. Where constructive notice arises as aforesaid, that
9 notice may be renewed or extended for additional ten year
10 periods by the filing for recordation, as provided in section
11 two of this article, a similar memorandum or notice of lis
12 pendens within ten years from the date of recordation of the
13 last such memorandum or notice.

CHAPTER 2

(Com. Sub. for S. B. 518—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five and eight, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to bringing the West Virginia air pollution control law into accord with the federal clean air act, as amended; making it unlawful to violate this article or rules and regulations promulgated thereunder; prohibiting any person from knowingly misrepresenting to any person in the state of West Virginia that the sale of air pollution control equipment will meet standards; providing for the election of a vice chairman and specifying his duties; requiring that no rule or regulation of the commission shall specify the manufacturer, type of construction, or particular method of compliance except as specifically required by the federal clean air act, as amended, or apply to any aspect employer-employee relationship; providing that the state rules and regulations may not be more stringent than those of the federal government; and requiring that a copy of proposed rules or regulations be filed in the office of the secretary of state sixty days prior to hearing.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and eight, article

twenty, 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 20. AIR POLLUTION CONTROL.

§16-20-1. Declaration of policy and purpose.

§16-20-2. Definitions.

§16-20-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.

§16-20-4. Air pollution control commission—Composition; appointment and terms of members; vacancies; compensation and expenses of members; organization and personnel; appointment of director; records; meetings.

§16-20-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

§16-20-1. Declaration of policy and purpose.

1 It is hereby declared to be the public policy of this
2 state and the purpose of this article to achieve and main-
3 tain such levels of air quality as will protect human
4 health and safety, and to the greatest degree practicable,
5 prevent injury to plant and animal life and property,
6 foster the comfort and convenience of the people, promote
7 the economic and social development of this state and
8 facilitate the enjoyment of the natural attractions of this
9 state.

10 To these ends it is the purpose of this article to provide
11 for a coordinated statewide program of air pollution
12 prevention, abatement and control; to facilitate coopera-
13 tion across jurisdictional lines in dealing with problems
14 of air pollution not confined within single jurisdictions;
15 and to provide a framework within which all values may
16 be balanced in the public interest.

17 Further, it is the public policy of this state to fulfill
18 its primary responsibility for assuring air quality pur-
19 suant to the "Federal Clean Air Act," as amended.

§16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 The term "person" means any and all persons, natural
3 or artificial, including the state of West Virginia or any
4 other state, the United States of America, any municipal,

5 statutory, public or private corporation organized or
6 existing under the laws of this or any other state or
7 country, and any firm, partnership or association of what-
8 ever nature.

9 The term "commission" means the air pollution control
10 commission, and the term "commissioner" shall mean a
11 member of said commission.

12 The term "air pollutants" means solids, liquids or gases
13 which, if discharged into the air, may result in a statu-
14 tory air pollution.

15 The term "discharge" refers to the release, escape or
16 emission of air pollutants into the air.

17 The term "statutory air pollution" means and is limited
18 to the discharge into the air by the act of man of sub-
19 stances (liquid, solid, gaseous, organic or inorganic) in
20 a locality, manner and amount as to be injurious to hu-
21 man health or welfare, animal or plant life, or property,
22 or which would interfere with the enjoyment of life or
23 property.

24 The term "director" means the director of the West
25 Virginia air pollution control commission appointed as
26 hereinafter provided.

**§16-20-3. Causing statutory pollution unlawful; article not to
provide persons with additional legal remedies.**

1 It shall be unlawful for any person to cause a statu-
2 tory air pollution, to violate the provisions of this
3 article, to violate any rules or regulations promulgated
4 pursuant to this article, to operate any facility subject
5 to the permit requirements of the commission without
6 a valid permit, or to knowingly misrepresent to any
7 person in the state of West Virginia that the sale of air
8 pollution control equipment will meet the standards of
9 this article or any rules and regulations promulgated
10 thereto: *Provided, however,* That nothing contained in
11 this article shall be construed to provide any person
12 with a legal remedy or basis for damages or other relief

13 not otherwise available to such person immediately prior
14 to enactment of this article.

**§16-20-4. Air pollution control commission—Composition; ap-
pointment and terms of members; vacancies; com-
pensation and expenses of members; organization
and personnel; appointment of director; records;
meetings.**

1 The "air pollution control commission," heretofore
2 created, shall continue in existence as an agency of the
3 state but on and after the effective date of this act
4 shall consist of seven members, including the state direc-
5 tor of health and the commissioner of agriculture, who
6 shall be members ex officio, and five other members to be
7 appointed by the governor with the advice and consent
8 of the Senate, two of whom shall be representative of
9 industries engaged in business in this state, and three
10 of whom shall be representative of the public at large.
11 The three appointed members of the commission in
12 office on the effective date of this act shall, unless
13 sooner removed, continue to serve until their terms expire
14 and until their successors have been appointed and
15 have qualified. On or before June fifteen, one thousand
16 nine hundred sixty-seven, the governor shall appoint one
17 member to serve until June thirty, one thousand nine
18 hundred seventy, and one member to serve until June
19 thirty, one thousand nine hundred seventy-one, or until
20 their successors have been appointed and have qualified.
21 As the terms of the three appointed members of the
22 commission in office on the effective date of this act
23 expire and as the terms of the two members to be ap-
24 pointed by the governor on or before June fifteen, one
25 thousand nine hundred sixty-seven, expire, members
26 shall be appointed for overlapping terms of five years,
27 so that one term expires each year, or until their suc-
28 cessors have been appointed and have qualified. Any
29 vacancy in the office of an appointed member of the
30 commission shall be filled by appointment by the gov-
31 ernor for the unexpired term of the appointed member
32 whose office shall be vacant.

33 The ex officio members of the commission shall receive
34 no salary or remuneration for their services as such but
35 they shall be reimbursed, out of moneys appropriated
36 for such purpose, for all reasonable and necessary ex-
37 penses actually incurred in the discharge of their duties
38 as such.

39 As compensation for his services on the commission,
40 each appointed member shall receive, out of moneys
41 appropriated for such purpose, the sum of fifty dollars
42 for each day or substantial portion thereof that he is
43 actually engaged in the work of the commission. Each
44 member shall also be entitled to be reimbursed, out of
45 moneys appropriated for such purpose, for any reason-
46 able and necessary expenses actually incurred in the
47 discharge of his duties as a member of the commission.

48 At its first meeting the commission shall elect from its
49 membership a chairman, and at the first meeting in each
50 fiscal year thereafter the commission shall elect from its
51 membership a chairman to act during such fiscal year.
52 At similar times the commission shall elect from its
53 membership a vice chairman and appoint a secretary.
54 The secretary need not be a member of the commission.
55 The vice chairman shall preside over the meetings and
56 hearings of the commission in the absence of the chair-
57 man. The commission shall appoint and employ a direc-
58 tor and such personnel as may be required, whose duties
59 shall be defined by the commission and whose compen-
60 sation, to be fixed by the commission, shall be paid out
61 of the state treasury, upon the requisition of the com-
62 mission, from moneys appropriated for such purposes.

63 The commission may establish rules for the regulation
64 of its affairs and the conduct of all proceedings before it.
65 All proceedings of the commission shall be entered in a
66 permanently bound record book, properly indexed, and
67 the same shall be carefully preserved. Copies of orders
68 entered by the commission, as well as copies of papers
69 or documents filed with it, or the records of proceedings
70 before the commission, shall be attested by the secretary
71 of the commission. The commission shall meet at such

72 times and places as may be agreed upon by the commis-
73 sioners, or upon the call of the chairman of the commis-
74 sion or any two commissioners, all of which meetings
75 shall be general meetings for the consideration of any
76 and all matters which may properly come before the
77 commission.

§16-20-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

1 The commission is hereby authorized and empowered:

2 (1) To develop ways and means for the regulation and
3 control of pollution of the air of the state;

4 (2) To advise, consult and cooperate with other agen-
5 cies of the state, political subdivisions of the state, other
6 states, agencies of the federal government, industries,
7 and with affected groups in furtherance of the declared
8 purposes of this article;

9 (3) To encourage and conduct such studies and re-
10 search relating to air pollution and its control and abate-
11 ment as the commission may deem advisable and neces-
12 sary;

13 (4) To adopt and to promulgate reasonable rules and
14 regulations, not inconsistent with the provisions of this
15 article, relating to the control of air pollution: *Provided*,
16 That no rule or regulation of the commission shall specify
17 a particular manufacturer of equipment nor a single
18 specific type of construction nor a particular method of
19 compliance except as specifically required by the "Federal
20 Clean Air Act," as amended, nor shall any such rule or
21 regulation apply to any aspect of an employer-employee
22 relationship: *Provided further*, That no rule, regulation,
23 standard, program or plan of the commission to control
24 air pollution from any source hereafter promulgated,
25 adopted or implemented, may be more stringent than any
26 federal rule, regulation, standard, program or plan appli-
27 cable to the control of air pollution from that source;

28 (5) To enter orders requiring compliance with the pro-
29 visions of this article and the rules and regulations law-
30 fully promulgated hereunder;

31 (6) To consider complaints, subpoena witnesses, ad-
32 minister oaths, make investigations and hold hearings
33 relevant to the promulgation of rules and regulations and
34 the entry of compliance orders hereunder;

35 (7) To encourage voluntary cooperation by munici-
36 palities, counties, industries and others in preserving the
37 purity of the air within the state;

38 (8) To employ personnel, including specialists and
39 consultants, purchase materials and supplies, and enter
40 into contracts necessary, incident or convenient to the
41 accomplishment of the purpose of this article;

42 (9) To enter and inspect any property, premise or
43 place on or at which a source of air pollutants is located or
44 is being constructed, installed or established at any rea-
45 sonable time for the purpose of ascertaining the state of
46 compliance with this article and rules and regulations
47 in force pursuant thereto. No person shall refuse entry or
48 access to any authorized representative of the commis-
49 sion who requests entry for purposes of inspection, and
50 who presents appropriate credentials; nor shall any per-
51 son obstruct, hamper or interfere with any such inspec-
52 tion: *Provided, however,* That nothing contained in this
53 article shall be construed to allow a search of a private
54 dwelling, including the curtilage thereof, without a prop-
55 er warrant;

56 (10) Upon reasonable evidence of a violation of this
57 article, which presents an imminent and serious hazard to
58 public health, to give notice to the public or to that por-
59 tion of the public which is in danger by any and all
60 appropriate means;

61 (11) To cooperate with, receive and expend money
62 from the federal government and other sources;

63 (12) To represent the state in any and all matters per-
64 taining to plans, procedures and negotiations for inter-
65 state compacts in relation to the control of air pollution;

66 (13) To appoint advisory councils from such areas of
67 the state as it may determine. Each such council so ap-

68 pointed shall consist of not more than five members ap-
69 pointed from the general public, for each area so desig-
70 nated. Such members shall possess some knowledge and
71 interest in matters pertaining to the regulation, control
72 and abatement of air pollution. The council may advise
73 and consult with the commission about all matters per-
74 taining to the regulation, control and abatement of air
75 pollution within such area;

76 (14) To require any and all persons who are directly
77 or indirectly discharging air pollutants into the air to
78 file with the commission such information as the director
79 may require in a form or manner prescribed by him for
80 such purpose, including, but not limited to, location, size
81 and height of discharge outlets, processes employed, fuels
82 used and the nature and time periods of duration of
83 discharges. Such information shall be filed with the di-
84 rector, when and in such reasonable time, and in such
85 manner as the director may prescribe;

86 (15) To require the owner or operator of any station-
87 ary source discharging air pollutants to install such mon-
88 itoring equipment or devices as the director may pre-
89 scribe and to submit periodic reports on the nature and
90 amount of such discharges to the commission;

91 (16) To do all things necessary and convenient to pre-
92 pare and submit a plan or plans for the implementation,
93 maintenance and enforcement of the "Federal Clean Air
94 Act," as amended: *Provided*, That in preparing and sub-
95 mitting each such plan the commission shall establish in
96 such plan that such standard shall be first achieved, main-
97 tained and enforced by limiting and controlling emissions
98 of pollutants from commercial and industrial sources and
99 locations and shall only provide in such plans for limiting
100 and controlling emissions of pollutants from private
101 dwellings and the curtilage thereof as a last resort:
102 *Provided further*, That nothing herein contained shall be
103 construed to affect plans for achievement, maintenance
104 and enforcement of motor vehicle emission standards and
105 of standards for fuels used in dwellings; and

106 (17) Whenever the commission achieves informally,

107 by letter, or otherwise, an agreement with any person
108 that said person will cease and desist in any act resulting
109 in the discharge of pollutants or do any act to reduce or
110 eliminate such discharge, such agreement shall be em-
111 bodied in a consent order and entered as, and shall have
112 the same effect as, an order entered after a hearing as
113 provided in section six of this article.

114 The attorney general and his assistants and the prose-
115 cuting attorneys of the several counties shall render to
116 the commission without additional compensation such
117 legal services as the commission may require of them to
118 enforce the provisions of this article.

119 No rule and regulation of the commission pertaining to
120 the control, reduction or abatement of air pollution shall
121 become effective until after at least one public hearing
122 thereon shall have been held by the commission within
123 the state. Notice to the public of the time and place of
124 any such hearing shall be given by the commission at
125 least thirty days prior to the scheduled date of such hear-
126 ing by advertisement published as a Class II legal adver-
127 tisement in compliance with the provisions of article
128 three, chapter fifty-nine of this code, and the publication
129 area for such publication shall be in at least one county
130 in each affected air quality control region defined by the
131 commission. A copy of any proposed rule or regulation of
132 the commission shall be filed in the office of the secretary
133 of state at least sixty days prior to the scheduled date of
134 any such hearing. Full opportunity to be heard shall be
135 accorded to all persons in attendance and any person,
136 whether or not in attendance at such hearing, may submit
137 in writing his views with respect to any such rule and
138 regulation to the commission within thirty days after such
139 hearing. After such thirty-day period, no views or com-
140 ments shall be received in writing or otherwise, unless
141 formally solicited by the commission. The proceedings at
142 the hearing before the commission shall be recorded by
143 mechanical means or otherwise as may be prescribed by
144 the commission. Such record of proceedings need not be
145 transcribed unless requested by an interested party in

146 which event the prevailing rates for such transcripts will
147 be required from such interested party.

§16-20-8. Penalties; recovery and disposition; duties of prosecuting attorneys.

1 Any person who shall fail or refuse to comply with any
2 final order made and entered hereunder to correct a statu-
3 tory air pollution within the time fixed by such order, or
4 any extension of time granted by the commission, shall
5 be subject to a penalty of not more than one thousand
6 dollars for each day that such failure or refusal continues
7 after such time has expired, which penalty may be re-
8 covered in a civil action brought by the commission in the
9 name of the state of West Virginia in the circuit court of
10 any county wherein such person resides or is engaged in
11 the activity complained of. The amount of the penalty
12 shall be fixed by the court without a jury. The amount of
13 any such penalties collected by the commission shall be
14 deposited in the general fund of the state treasury ac-
15 cording to law. Upon a request in writing from the com-
16 mission, it shall be the duty of the prosecuting attorney of
17 the county in which any such action for penalties accruing
18 under this section may be brought to institute and pros-
19 ecute all such actions on behalf of the commission.

20 For the purpose of this section, violations on separate
21 days shall be considered separate offenses.

CHAPTER 3

(S. B. 132—By Mr. Gainer and Mr. Rollins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article one-g, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the interstate compact on air pollution.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to interstate compact on air pollution.

- 1 Article one-g, chapter twenty-nine of the code of
- 2 West Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 4

(H. B. 1067—By Mr. Givens)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing a more specific definition of cruelty to animals; elimination of the lien for care and provision for such animals.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, 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 10. HUMANE OFFICERS.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; provisions not applicable to farm livestock or poultry.

- 1 Such officers shall take charge of any animal found
- 2 abandoned, neglected, or cruelly, unnecessarily or needlessly
- 3 beaten, tortured, tormented, mutilated or overloaded, over-
- 4 driven or willfully deprived of necessary sustenance or ade-
- 5 quate shelter, and shall thereupon give notice thereof to the
- 6 owner, if known, and shall care and provide for such animal
- 7 until the owner shall take charge of the same: *Provided*, That
- 8 if it shall appear to such officers that the owner has willfully
- 9 abandoned, neglected or cruelly, unnecessarily or needlessly

10 beaten, tortured, tormented, mutilated or overloaded, over-
11 driven or willfully deprived of necessary sustenance or ade-
12 quate shelter such animal, the animal shall not be returned
13 to him until he has been acquitted of the charge, or, if
14 convicted thereof, until he has given bond as provided in the
15 last preceding section, and not then until he has fully paid
16 all charges for the care and provisions for such animal during
17 the time it shall have been in the possession of such humane
18 officer.

19 This section shall not apply to farm livestock or poultry
20 which are kept and maintained by usual and accepted standards
21 of livestock or poultry production upon a farm.

CHAPTER 5

(H. B. 1168—By Mr. Polan)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all General Revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, to the West Virginia Board of Regents (Control), Account No. 279, supplementing chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 1979, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1978-79, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 279, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill" be supplemented by adding the following sums to the designated line items:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EDUCATIONAL

4 26—*West Virginia Board of Regents (Control)*

5 Acct. No. 279

6	1	Personal Services	\$3,603,000
7	2	Current Expenses	2,693,000
8	4	Equipment	20,000
9		Total	\$6,316,000.

10 The purpose of this supplementary appropriation bill is to
 11 supplement the aforesaid account and items therein for ex-
 12 penditure in the current fiscal year of 1978-79. Such amounts
 13 shall be available for expenditure immediately upon the ef-
 14 fective date of the bill.

CHAPTER 6

(Com. Sub. for S. B. 474—By Mr. Brotherton, Mr. President)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, to the Department of Public Safety, Account No. 570, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 1979, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1978-79, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 570, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1	PROTECTION	
2	100— <i>Department of Public Safety</i>	
3	Acct. No. 570	
4	1 Personal Services	\$200,000.00
5	2 Current Expenses	\$320,000.00

6 The purpose of this supplementary appropriation bill
7 is to supplement the aforesaid account and items therein
8 for expenditure in the current fiscal year of 1978-79. Such
9 amounts shall be available for expenditure immediately
10 upon the effective date of the bill.

CHAPTER 7

(H. B. 1499—By Mr. Polan)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all General Revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, to the

Department of Welfare, Account No. 405, supplementing chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 10, 1979, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1978-79, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 405, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill" be supplemented by adding the following sum to the designated line item:

1	TITLE II. APPROPRIATIONS.	
2	Section 1. Appropriations from general revenue.	
3	HEALTH AND WELFARE	
4	62— <i>Department of Welfare</i>	
5	Acct. No. 405	
6	8 Direct Medical Services	\$2,500,000

7 The purpose of this supplementary appropriation bill is to
 8 supplement the aforesaid account and item therein for expendi-
 9 ture in the current fiscal year of 1978-79. Such amounts shall
 10 be available for expenditure immediately upon the effective
 11 date of the bill.

CHAPTER 8

(H. B. 1518—By Mrs. Neal)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between line items in the appropriation for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, to the State Health Department, Account No. 400, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."

WHEREAS, Continued efficient and effective operation of the Alcohol and Drug Abuse Program of the State Health Department requires the transfer of funds between line items; therefore

Be it enacted by the Legislature of West Virginia:

That items of the appropriation of Account No. 400, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, be supplemented, amended and transferred to read as follows:

1	58— <i>State Health Department</i>	
2	Acct. No. 400	
3	Alcoholism and Drug Abuse	
4	9 Personal Services	\$ 446,462
5	10 Current Expenses	134,679

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

CHAPTER 9

(H. B. 1455—By Mr. Polan)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-nine, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, 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-nine, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 **TITLE II. APPROPRIATIONS.**

2 **Section 2. Appropriations from other funds.**

3 120—*State Department of Highways*

4 Acct. No. 670

5 **TO BE PAID FROM STATE ROAD FUND**

6	1	Maintenance Expressway, Trunkline and	
7	2	Feeder	\$ 69,000,000
8	3	Maintenance State Local Services	85,000,000
9	4	Inventory Revolving ..	2,000,000
10	5	Equipment Revolving	8,000,000
11	6	General Operations	16,000,000
12	7	Debt Service	78,000,000
13	8	Interstate Construction	98,823,000
14	9	Other Federal Aid Programs	88,753,000

15	10	Appalachian Program	60,781,000
16	11	Nonfederal Aid Construction	119,261,000
17	12	Total	\$625,618,000

18 The purpose of this bill is to supplement, amend and trans-
 19 fer certain moneys from items of the existing appropriations
 20 to other items of such appropriations for the designated
 21 spending unit, and to reflect the total spending authority of
 22 the spending unit for the 1978-79 fiscal year, with no new
 23 moneys being appropriated hereby. The amounts as newly
 24 itemized for expenditure in such fiscal year shall be available
 25 for expenditure upon the effective date of this bill.

CHAPTER 10

(Com. Sub. for H. B. 1444—By Mr. Farley and Mr. Shaffer)

[Passed March 7, 1979; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Industrial School for Boys, Account No. 370, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 370, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTION

4 51—*West Virginia Industrial School for Boys*

5 Acct. No. 370

6	1	Personal Services	\$ 920,201
7	2	Current Expenses	330,073

8 The purpose of this supplementary appropriation bill is to
 9 supplement, amend and transfer certain moneys from one item
 10 of the existing appropriation to another item of such appro-
 11 priation for the designated spending unit, with no new moneys
 12 being appropriated hereby. The amounts as newly itemized
 13 for expenditure during the fiscal year one thousand nine hun-
 14 dred seventy-nine, shall be available for expenditure immed-
 15 iately upon the effective date of this bill.

CHAPTER 11

(Com. Sub. for H. B. 1443—By Mr. Farley and Mr. Shaffer)

[Passed March 7, 1979; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Penitentiary, Account No. 375, as appropriated by chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 375, chapter four, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 CORRECTION

4 56—*West Virginia Penitentiary*

5 Acct. No. 375

6	1	Personal Services	\$ 2,420,162
7	2	Current Expenses	1,391,875

8 The purpose of this supplementary appropriation bill is to
9 supplement, amend and transfer certain moneys from one
10 item of the existing appropriation to another item of such
11 appropriation for the designated spending unit, with no new
12 moneys being appropriated hereby. The amounts as newly
13 itemized for expenditure during the fiscal year one thousand
14 nine hundred seventy-nine, shall be available for expenditure
15 immediately upon the effective date of this bill.

CHAPTER 12

(Com. Sub. for H. B. 1153—By Mr. Tompkins)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and eleven, article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing bond issuers to withdraw additional funds which, although not earmarked for the purpose of amortizing bonded indebtedness, were deposited with the municipal bond commission to meet their debt obligations, provided that such withdrawal does not create a deficit in issuer's account, and provided that such withdrawals relate to funds remitted to or deposited with the municipal bond commission on or after January one, one thousand nine hundred seventy-four.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

1 (a) *Deposit of funds.*—All interest and other funds on hand

2 July first of each year and belonging to the counties, municipi-
3 palities or school districts and earmarked for the purpose of
4 amortizing bonded indebtedness, shall be, by the treasurer or
5 collector thereof, not later than the following September, for-
6 warded to the commission to be deposited in the state treasury
7 to the credit of the state.

8 (b) *Insufficient deposit.*—Whenever the amount deposited
9 for any issuer is not sufficient to meet the interest or principal
10 due, it shall be the duty of the treasurer or collector of such
11 issuer, upon being notified of the fact by the commission, to
12 immediately remit all funds in his possession that have been
13 earmarked by the issuer for the purpose of amortizing bonded
14 indebtedness plus such additional funds as are necessary to
15 meet the interest or principal due.

16 (c) *Withdrawal of additional funds.*—If an issuer has re-
17 mitted to the commission funds not earmarked for the purpose
18 of amortizing bonded indebtedness, all or a portion of such
19 funds may be withdrawn by the issuer upon sixty days written
20 notice to the commission: *Provided*, That such withdrawal
21 shall neither create a deficit in the issuer's account with the
22 commission nor be in conflict with terms of the bond issue:
23 *Provided, however*, That such funds were remitted or deposited
24 with the commission on or after January one, one thousand
25 nine hundred seventy-four.

26 (d) *Payment of taxes.*—Any taxes to provide for the pay-
27 ment of principal, creation of a reserve or sinking fund, or for
28 the payment of interest on bonds by any county, municipality
29 or school district which shall be collected by any state officer,
30 shall be paid by such officer to the commission to be at once
31 applied to the payment of the debt of the county, municipality
32 or school district and the fact of such application of such fund
33 shall be reported by the auditor to the treasurer or collector of
34 such issuer, which report shall be a receipt for the amount
35 therein named.

36 (e) *Municipal bond commission fund.*—The state auditor
37 and the state treasurer shall carry an account to be known as
38 the municipal bond commission fund. All deposits shall be
39 carried as a part of such fund.

40 (f) *Deposit of collections.*—The commission shall deposit
41 all collections and receipts with the treasurer daily.

§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

1 The commission shall, annually, at least thirty days before
2 the time for making up the estimate for levy purposes, render
3 to each political subdivision having outstanding general obli-
4 gation bonds, a statement showing the levy required to pay the
5 interest on and provide for the retirement of the subdivision's
6 outstanding general obligation bonds.

7 In determining the levy required, the commission shall be
8 governed by the terms of article one, section thirty-four of this
9 chapter or article one, section thirty-five of this chapter. For
10 the purposes of this section, the amount of any moneys, not
11 earmarked for amortizing bonded indebtedness, but which was
12 forwarded by the issuer to the commission for the purpose of
13 meeting principal and interest due under section nine of this
14 article, shall be considered a deficiency for a prior year.

CHAPTER 13

(S. B. 317—By Mr. Palumbo)

[Passed March 7, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the assignment of child support obligations to the department; creation of debt owed to state; subrogation of the department of welfare to rights of recipient; and providing for release of assignment.

Be it enacted by the Legislature of West Virginia:

That article three, chapter nine of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four, to read as follows:

ARTICLE 3. APPLICATION FOR AND GRANTING OF ASSISTANCE.

§9-3-4. Assignment of support obligations.

1 Any recipient of financial assistance under the program
2 of state and federal assistance established by Title IV of
3 the federal Social Security Act of 1965, as amended, or
4 any successor act thereto, shall, upon receipt of such
5 assistance be deemed to have assigned to the West Vir-
6 ginia department of welfare all rights, title and interest
7 such recipient may have to the receipt of support and
8 maintenance moneys from any person responsible for the
9 support and maintenance of any member of the benefit
10 group. Persons responsible for support and maintenance
11 shall include all persons who under the laws of the state
12 of West Virginia owe obligations of support or mainte-
13 nance to a child or to the caretaker of a child. The assign-
14 ment contemplated herein shall include all amounts of
15 support and maintenance which shall be accrued to the
16 recipient of assistance and not received and all amounts
17 of support and maintenance which shall accrue during
18 recipient's period of eligibility: *Provided*, That, subject
19 to applicable federal and state laws, the department of
20 welfare shall be entitled to retain only so much of the
21 support and maintenance as is necessary to reimburse
22 the public assistance actually paid.

23 Each applicant for assistance subject to the assignment
24 established herein shall (during the application process)
25 be informed in writing of the nature of the assignment.

26 Any payment of federal and state assistance made to or
27 for the benefit of any child or children or the caretaker of
28 a child or children creates a debt due and owing to the
29 department of welfare by the person or persons who are
30 responsible for the support and maintenance of such
31 child, children or caretaker in an amount equal to the

32 amount of assistance money paid: *Provided, however,*
33 That the debt shall be limited by the amount established
34 in any court order or final decree of divorce if the amount
35 in such order or decree is less than the amount of assis-
36 tance paid.

37 The assignment hereunder shall subrogate the depart-
38 ment of welfare to the rights of the child, children or
39 caretaker to the prosecution or maintenance of any action
40 or procedure existing under law providing a remedy
41 whereby the department of welfare may be reimbursed
42 for moneys expended on behalf of the child, children or
43 caretaker. The department of welfare shall further be
44 subrogated to the debt created by any order or decree
45 awarding support and maintenance to or for the benefit
46 of any child, children or caretaker included within the
47 assignment hereunder and shall be empowered to receive
48 such money judgments and endorse any check, draft,
49 note or other negotiable document in payment thereof.

50 The debt created under this section shall not be in-
51 curred by nor at any time be collected from a responsible
52 person who is a recipient of federal and state assistance
53 moneys for the benefit of any child for the period such
54 person or persons remain in such state.

55 The assignment created hereunder shall be released
56 upon closure of the assistance case and the termination of
57 assistance payments except for such support and main-
58 tenance obligations accrued and owing at the time of
59 closure which shall be necessary to reimburse the de-
60 partment for any balance of assistance payments made.
61 The department of welfare may, at the election of the
62 recipient, continue to receive support and maintenance
63 moneys on behalf of the recipient following closure of the
64 assistance case and shall distribute such moneys to the
65 caretaker, child or children. The department of welfare
66 shall notify in writing all appropriate persons of the
67 terms of the release of assignment hereunder.

CHAPTER 14

(H. B. 1484—By Mr. Albright and Mr. Martin, 35th District)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to juvenile offenders rehabilitation; providing for a short title; setting forth legislative purposes and intent; stating definitions; describing the responsibility of the department of welfare; providing for the establishment and maintenance of rehabilitative facilities for status offenders; describing the programs and services of such rehabilitative facilities; requiring county boards of education to provide instruction for children residing at such facilities; authorizing the department of welfare to enforce legal custody; describing reporting requirements; and providing for a catalogue of services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHABILITATION ACT.

§49-5B-1. Short title.

§49-5B-2. Purpose and intent.

§49-5B-3. Definitions.

§49-5B-4. Responsibilities of the department of welfare.

§49-5B-5. Rehabilitative facilities for status offenders.

§49-5B-6. Enforcement of legal custody.

§49-5B-7. Reporting requirements; cataloguing of services.

§49-5B-1. Short title.

- 1 This article shall be known and cited as the "West Virginia
- 2 Juvenile Offender Rehabilitation Act."

§49-5B-2. Purpose and intent.

1 It is the purpose and intent of the Legislature to provide
2 for the creation of all reasonable means and methods that can
3 be established by a humane and enlightened state, solicitous
4 of the welfare of its children, for the prevention of delin-
5 quency and for the care and rehabilitation of delinquent
6 children. It is further the intent of the Legislature that
7 this state, through the department of welfare, establish, main-
8 tain, and continuously refine and develop, a balanced and
9 comprehensive state program for children who are potentially
10 delinquent or are delinquent, other than those children com-
11 mitted to the care and custody of the department of correc-
12 tions.

§49-5B-3. Definitions.

1 For the purposes of this article:

2 (1) "Juvenile offender" means an individual subject to
3 the exercise of juvenile court jurisdiction for purposes of
4 adjudication and treatment as a delinquent.

5 (2) "Criminal-type offender" means a juvenile who has
6 been charged with delinquency or adjudicated a delinquent for
7 conduct which would be a crime if committed by an adult.

8 (3) "Status offender" means a juvenile who has been
9 charged with delinquency or adjudicated a delinquent for
10 conduct which would not be a crime if committed by an adult.

11 (4) "Accused juvenile offender" means a juvenile with re-
12 spect to whom a petition has been filed in the juvenile court
13 alleging that such juvenile is a criminal-type offender or is
14 a status offender and no final adjudication has been made by
15 the juvenile court.

16 (5) "Adjudicated juvenile offender" means a juvenile
17 whom the juvenile court has determined is a criminal-type
18 offender or is a status offender.

19 (6) "Facility" means a place, an institution, a building
20 or part thereof, set of buildings or an area whether or not
21 enclosing a building or set of buildings which is used for

22 the lawful custody and treatment of juveniles and may be
23 owned or operated by public or private agencies.

24 (7) "Secure facility" means a facility which is designed
25 and operated so as to ensure that all entrances and exits from
26 such facility are under the exclusive control of the staff of
27 such facility, whether or not the person being detained has
28 freedom of movement within the perimeter of the facility, or
29 which relies on locked rooms and buildings, fences or physical
30 restraint in order to control behavior of its residents.

31 (8) "Nonsecure facility" means a facility not character-
32 ized by use of physically restricting construction, hardware
33 and procedures and which provides its residents access to the
34 surrounding community with minimal supervision.

35 (9) "Community-based" when used to describe a facility,
36 program or service means a small, open group home or other
37 suitable place located near the juvenile's home or family,
38 and programs of community supervision and service which
39 maintain community participation in the planning, operation
40 and evaluation of their programs which may include, but are
41 not limited to, medical, educational, vocational, social and
42 psychological guidance, training, counseling, alcoholism treat-
43 ment, drug treatment and other rehabilitative services.

44 (10) "Lawful custody" means the exercise of care, super-
45 vision and control over a juvenile offender or nonoffender
46 pursuant to the provisions of the law or of a judicial order or
47 decree.

48 (11) "Exclusively," when used to describe the population
49 of a facility, means that the facility is used only for a specifi-
50 cally described category of juvenile to the exclusion of all
51 other types of juveniles.

52 (12) "Temporary resident" means a status offender tem-
53 porarily residing in a rehabilitative facility awaiting court action
54 in a detention hearing, adjudicatory hearing, or a dispositional
55 hearing.

§49-5B-4. Responsibilities of the department of welfare.

- 1 (a) The department of welfare is empowered to establish,
- 2 and shall establish, subject to the limits of funds available

3 or otherwise appropriated therefor, programs and services
4 designed to prevent juvenile delinquency, to divert juveniles
5 from the juvenile justice system, to provide community-based
6 alternatives to juvenile detention and correctional facilities,
7 and to encourage a diversity of alternatives within the juvenile
8 justice system. The development, maintenance and expansion
9 of programs and services may include, but not be limited to,
10 the following:

11 (1) Community-based programs and services for the pre-
12 vention and treatment of juvenile delinquency through the
13 development of foster-care and shelter-care homes, group
14 homes, halfway houses, homemaker and home health services,
15 twenty-four hour intake screening, volunteer and crisis home
16 programs, day treatment and home probation, and any other
17 designated community-based diagnostic, treatment or rehabili-
18 tative service;

19 (2) Community-based programs and services to work with
20 parents and other family members to maintain and strengthen
21 the family unit so that the juvenile may be retained in his
22 home;

23 (3) Youth service bureaus and other community-based pro-
24 grams to divert youth from the juvenile court or to support,
25 counsel, or provide work and recreational opportunities for
26 delinquents and other youth to help prevent delinquency;

27 (4) Projects designed to develop and implement programs
28 stressing advocacy activities aimed at improving services for
29 and protecting the rights of youth impacted by the juvenile
30 justice system;

31 (5) Educational programs or supportive services designed
32 to keep delinquents, and to encourage other youth to remain,
33 in elementary and secondary schools or in alternative learning
34 situations;

35 (6) Expanded use of probation and recruitment and train-
36 ing of probation officers, other professional and paraprofes-
37 sional personnel and volunteers to work effectively with youth;

38 (7) Youth initiated programs and outreach programs de-

39 signed to assist youth who otherwise would not be reached
40 by traditional youth assistance programs;

41 (8) A statewide program designed to reduce the number of
42 commitments of juveniles to any form of juvenile facility as a
43 percentage of the state juvenile population, to increase the use
44 of nonsecure community-based facilities as a percentage of
45 total commitments to juvenile facilities, and to discourage the
46 use of secure incarceration and detention.

47 (b) The department of welfare shall establish, within the
48 funds available, an individualized program of rehabilitation for
49 each accused juvenile offender referred to the department after
50 being allowed an improvement period by the juvenile court,
51 and for each adjudicated juvenile offender who, after adjudica-
52 tion, is referred to the department for investigation or treatment
53 or whose custody is vested in the department. Such individual-
54 ized program of rehabilitation shall take into account the
55 programs and services to be provided by other public or
56 private agencies or personnel which are available in the
57 community to deal with the circumstances of the particular
58 child. Such individualized program of rehabilitation shall
59 be furnished to the juvenile court and shall be available to
60 counsel for the child; it may be modified from time to time
61 at the direction of the department or by order of the juvenile
62 court. The department may develop an individualized program
63 of rehabilitation for any child referred for noncustodial
64 counseling under section five, article three of this chapter, for
65 any child receiving counsel and advice under section five,
66 article three-a of this chapter, or for any other child upon
67 the request of a public or private agency.

68 (c) The department of welfare is authorized to enter into
69 cooperative arrangements and agreements with private agencies
70 or with agencies of the state and its political subdivisions to
71 effectuate the purpose of this article.

§49-5B-5. Rehabilitative facilities for status offenders.

1 (a) The department of welfare shall, within the limits of
2 state and federal funds appropriated therefor, establish and
3 maintain one or more rehabilitative facilities to be used ex-
4 clusively for the lawful custody of status offenders. Each

5 such facility shall be, primarily, a nonsecure facility having
6 as its primary purpose the rehabilitation of adjudicated juve-
7 nile offenders who are status offenders. Such facility shall not
8 have a bed capacity for more than twenty children, and shall
9 minimize the institutional atmosphere and prepare the child
10 for reintegration into the community: *Provided*, That such
11 facility may function as a temporary residential facility for
12 accused juvenile offenders when the juvenile is a status offend-
13 er and no final adjudication has been made by the juvenile
14 court: *Provided, however*, That a portion of such facility may
15 be designed and operated as a secure facility used exclusively
16 for status offenders whom the juvenile court has specifically
17 found to be so unmanageable, ungovernable and antisocial
18 that no other reasonable alternative exists, or could exist, for
19 treatment or restraint other than placement in a secure fa-
20 cility. Temporary residents of the facility shall only be placed
21 in the secure portion of the facility by order of the juvenile
22 court upon a specific finding by the court that the child is
23 likely to injure himself or others or to run away if placed in
24 a less restrictive environment: *Provided*, That unless the
25 court order committing the child specifically orders that the
26 child not be removed from the secure portion of the facility,
27 the person having control of the facility shall have the author-
28 ity to permit any temporary resident to remain in the nonse-
29 cure portions of the facility if such temporary resident demon-
30 strates a willingness to remain at the facility voluntarily and
31 to conform his or her conduct to the lawful requirements es-
32 tablished for residents of the nonsecure portions of the facility.

33 (b) Within the funds available, rehabilitative programs and
34 services shall be provided by or through each such facility and
35 may include, but not be limited to, medical, educational, voca-
36 tional, social and psychological guidance, training, counseling,
37 alcoholism treatment, drug treatment and other rehabilitative
38 services. The department of welfare shall provide to each child
39 adjudicated delinquent and committed to the facility a program
40 of treatment and services consistent with the individualized
41 program of rehabilitation developed for such child. In the case
42 of any other child residing at the facility, the department shall
43 provide such programs and services as may be proper in the cir-

44 cumstances including, but not limited to, any such programs or
45 services directed to be provided by the court.

46 (c) The board of education of the county in which the fa-
47 cility is located shall provide instruction for children residing
48 at the facility. Residents who can be permitted to do so shall
49 attend local schools, and instruction shall otherwise take place
50 at the facility.

51 (d) Facilities established pursuant to this section shall be
52 structured so as to be or become community-based facilities.

§49-5B-6. Enforcement of legal custody.

1 The department of welfare shall have authority to require
2 any child committed to its legal custody to remain at and to
3 return to the residence to which the child is assigned by the
4 department or by the juvenile court. In aid of such authority,
5 and upon request of a designated employee of the department,
6 any police officer, sheriff, deputy sheriff, member or officer of
7 the department of public safety or juvenile court probation of-
8 ficer is authorized to take any such child into custody and
9 return such child to his or her place of residence or into the
10 custody of a designated employee of the department of welfare.

§49-5B-7. Reporting requirements; cataloging of services.

1 (a) The department of welfare shall from time to time, but
2 not less often than annually, review its programs and services
3 and submit a report to the governor, the Legislature and the
4 supreme court of appeals, analyzing and evaluating the effec-
5 tiveness of the programs and services being carried out by the
6 department. Such report shall include, but not be limited to,
7 an analysis and evaluation of programs and services continued,
8 established and discontinued during the period covered by the
9 report, and shall further describe programs and services which
10 should be implemented to further the purposes of this article.
11 Such report shall also include, but not be limited to, relevant
12 information concerning the number of children comprising the
13 population of any rehabilitative facility during the period
14 covered by the report, the length of residence, the nature of the
15 problems of each child, the child's response to programs and
16 services and such other information as will enable a user of the

17 report to ascertain the effectiveness of the facility as a re-
18 habilitative facility.

19 (b) The department of welfare shall, on or before the first
20 day of August, one thousand nine hundred seventy-nine, and
21 from time to time thereafter, but not less often than annually,
22 prepare a descriptive catalogue of its juvenile programs and
23 services and shall distribute copies of the same to every juvenile
24 court in the state and, at the direction of the juvenile court,
25 such catalogue shall be distributed to attorneys practicing be-
26 fore such court. Such catalogue shall also be made available
27 to members of the general public upon request. The catalogue
28 shall contain sufficient information as to the persons or agen-
29 cies responsible for particular programs and services so as to
30 enable a user of the catalogue to make inquiries and referrals.

CHAPTER 15

(Com. Sub. for H. B. 1452—By Mr. Teets and Mr. Tompkins)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the compensation of judges of the court of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-8. Compensation of judges; expenses.

1 Each judge of the court shall receive one hundred seven
2 dollars for each day actually served, and actual expenses in-
3 curred in the performance of his duties. The number of days

4 served by each judge shall not exceed one hundred in any
5 fiscal year, except by authority of the joint committee on
6 government and finance. Requisitions for compensation and
7 expenses shall be accompanied by sworn and itemized state-
8 ments, which shall be filed with the auditor and preserved
9 as public records. For the purpose of this section, time served
10 shall include time spent in the hearing of claims, in the con-
11 sideration of the record, in the preparation of opinions and in
12 necessary travel.

CHAPTER 16

(S. B. 523—By Mr. Hanlon and Mr. Hinkle)

[Passed March 7, 1979; 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 board of regents; department of corrections; department of employment security; department of finance and administration; department of health; department of highways; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; governor's office—emergency flood disaster relief; public service commission; and treasury department, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact
2 and recommendations reported to it by the court of
3 claims concerning various claims against the state and
4 agencies thereof, and in respect to each of the follow-
5 ing claims the Legislature adopts those findings of fact

6 as its own, and hereby declares it to be the moral
 7 obligation of the state to pay each such claim in the
 8 amount specified below, and directs the auditor to issue
 9 warrants for the payment thereof out of any fund
 10 appropriated and available for the purpose.

11 (a) Claims against the Board of Regents:

12 (To be paid from General Revenue Fund)

13	(1) Abbott Laboratories	\$ 637.72
14	(2) Ace Glass, Inc.	\$ 71.49
15	(3) Air Products and Chemicals, Inc.	\$ 204.37
16	(4) The C & P Telephone Company of	
17	WV	\$ 144.34
18	(5) Central States Resources, Inc.	\$ 17,356.03
19	(6) Climate Makers of Charleston, Inc.	\$ 903.00
20	(7) The Crocker-Fells Company	\$ 560.86
21	(8) Cutter Laboratories, Inc.	\$ 1,248.00
22	(9) Lillian Dalessio	\$ 300.00
23	(10) Diagnostic Isotopes, Inc.	\$ 81.60
24	(11) Ehrenreich Photo-Optical Ind. Inc.	\$ 388.95
25	(12) Fairmont Supply Company	\$ 20.40
26	(13) Hubbard Pump Co.	\$ 20.89
27	(14) Light Gallery and Supply Co.	\$ 31.00
28	(15) Roche Laboratories, Inc.	\$ 1,702.50
29	(16) State Farm Mutual Auto Insurance Co.,	
30	subrogee of Dana Lee Selvig	\$ 308.99
31	(17) Stuart's Drug & Surgical Supply Co.	\$ 757.16
32	(18) Syva, Inc.	\$ 80.48
33	(19) Uarco, Inc.	\$ 713.18
34	(20) Todd W. Ware and Taylor Publishing	
35	Co.	\$ 3,096.51
36	(21) Warren Associates	\$ 23.20
37	(22) John M. Weber	\$ 3,400.00

38 (b) Claims against the Department of
 39 Corrections:

40 (To be paid from General Revenue Fund)

41	(1) Bernhardt's Clothing Inc.	\$ 1,986.80
42	(2) Davis Memorial Hospital	\$ 3,233.19
43	(3) Memorial General Hospital	\$ 10,077.71

44	(4)	Positive Peer Culture, Inc.	\$ 26,341.15
45	(5)	Albert K. Tyre	\$ 178.10
46	(c)	Claim against the Department of	
47		Employment Security:	
48		(To be paid from Employment	
49		Security Fund)	
50	(1)	Odlund Haney Spangler, Jr.	\$ 88.50
51	(d)	Claim against the Department of Finance	
52		and Administration:	
53		(To be paid from General Revenue Fund)	
54	(1)	Guyan Transfer and Sanitation, Inc.	\$ 4,290.00
55	(e)	Claims against the Department of Health:	
56		(To be paid from General Revenue Fund)	
57	(1)	American Hospital Supply	\$ 424.32
58	(2)	Carl L. Baker, Jr.	\$ 6,450.01
59	(3)	H. M. Curry	\$ 6,273.89
60	(4)	Jack L. Rader	\$ 4,907.41
61	(5)	Henry Elden & Associates	\$ 71,889.00
62	(6)	Moore Business Forms, Inc.	\$ 51.42
63	(7)	Orkin Exterminating, Inc.	\$ 212.00
64	(8)	Silas C. Wiersma	\$ 1,120.00
65	(f)	Claims against the Department of	
66		Highways:	
67		(To be paid from State Road Fund)	
68	(1)	William J. Adkins, Dorothy Marie	
69		Adkins, Armilda Wiley, and Dorothy	
70		Marie Adkins, as next friend of Mary	
71		Jane Adkins and Peggy Joyce	
72		Adkins	\$ 2,000.00
73	(2)	Wayne Bayliss	\$ 251.83
74	(3)	Jeffrey D. Bubar	\$ 92.24
75	(4)	The C & P Telephone Co. of WV	\$ 1,399.97
76	(5)	Claywood Park Public Service District	\$ 162.50
77	(6)	Stanley N. Cosner	\$ 246.00
78	(7)	B. H. Cottle and B. H. Cottle, Executor	
79		of the Estate of Lucy M. Cottle,	
80		deceased	\$ 1,200.00

81	(8)	James H. Curnutte, Jr. & Deborah L.	
82		Curnutte	\$ 4,604.73
83	(9)	Rush Fields	\$ 1,142.18
84	(10)	A. M. Fredlock, II	\$ 235.20
85	(11)	Teresa K. Gillispie & Johnny Wayne	
86		Gillispie	\$ 99.13
87	(12)	Charles R. Gore	\$ 332.49
88	(13)	Halliburton Services	\$ 228.56
89	(14)	Linda E. Hamilton	\$ 92.00
90	(15)	Douglas Haney	\$ 309.50
91	(16)	Howard A. Haynes	\$ 300.19
92	(17)	Arnold G. Heater & Geraldine Heater	\$ 2,500.00
93	(18)	Alvin O. Hunter	\$ 223.00
94	(19)	R. L. Jarrell	\$ 291.42
95	(20)	Peggy Keyser	\$ 113.56
96	(21)	Forest Joe King	\$ 11,000.00
97	(22)	Forest Joe King, as father & next friend	
98		of Beverly King	\$ 2,500.00
99	(23)	Forest Joe King, as father & next friend	
100		of Denny Joe King	\$ 2,500.00
101	(24)	Patricia Ann King	\$ 20,000.00
102	(25)	Herman F. Lilly	\$ 1,200.00
103	(26)	Deloris J. Lively	\$ 98.88
104	(27)	Charles P. Long	\$ 43.76
105	(28)	Harold Mahaffee	\$ 94.24
106	(29)	Rhoda Raynett McIntyre	\$ 500.00
107	(30)	Morrison Printing Co., Inc.	\$ 3,000.00
108	(31)	Larry Roton	\$ 177.73
109	(32)	Mae Russell	\$ 700.00
110	(33)	James Ryan	\$ 800.00
111	(34)	Joyce Ryan	\$ 6,250.00
112	(35)	Robert Smith and Elizabeth Smith	\$ 4,000.00
113	(36)	A. A. Spagnuolo	\$ 480.00
114	(37)	Barbara H. Spitzer	\$ 300.00
115	(38)	Polly Stevens, Guardian of the Estate	
116		of James Walter Stevens and Timo-	
117		thy Stevens	\$ 8,450.00
118	(39)	Connie Ann Stone	\$ 176.73
119	(40)	Charles E. Taylor & Mary P. Taylor	\$ 1,566.75
120	(41)	Willard P. Teets, Attorney in Fact for	
121		Percy E. Teets	\$ 3,000.00

122	(42)	John Tillinghast & Janet Tillinghast ..	\$ 4,000.00
123	(43)	Vecellio & Grogan, Inc.	\$117,122.44
124	(44)	W. F. Webb	\$ 1,100.00
125	(45)	Patrick West	\$ 950.00
126	(46)	Lorraine White & Velma White	\$ 1,000.00
127	(g)	Claim against the Department of Motor	
128		Vehicles:	
129		(To be paid from State Road Fund)	
130	(1)	Wood County Bank	\$ 2,749.55
131	(h)	Claims against the Department of	
132		Natural Resources:	
133		(To be paid from General Revenue Fund)	
134	(1)	The C & P Telephone Co. of WV	\$ 442.36
135	(2)	Henry Elden & Associates	\$ 4,000.00
136	(3)	Alice Marcum	\$ 2,171.00
137	(4)	McCloy Construction Company, Inc. ...	\$ 27,000.00
138	(5)	Ostrin Electric Co.	\$ 997.50
139	(i)	Claims against the Department of	
140		Public Safety:	
141		(To be paid from General Revenue Fund)	
142	(1)	Richard L. Cunningham	\$ 290.00
143	(2)	Joseph Larry Garrett	\$ 290.56
144	(3)	Ora T. Herron	\$ 18.00
145	(4)	Harry Glenn Lucas, Jr.	\$ 283.52
146	(5)	Lowell J. Maxey	\$ 259.20
147	(j)	Claims against the Division of	
148		Vocational Rehabilitation:	
149		(To be paid from General Revenue Fund)	
150	(1)	Icy Mae DeWeese	\$ 202.50
151	(2)	Ethel Engegno	\$ 4,989.22
152	(3)	Rondal Fury	\$ 4,296.92
153	(4)	Ralph Keeling	\$ 4,593.88
154	(5)	Paul Leach	\$ 2,394.65
155	(6)	Ralph Parker	\$ 2,070.77
156	(7)	Elva Petts	\$ 3,985.42
157	(8)	Gertrude Preston	\$ 5,771.49

158	(9)	James Preston	\$ 5,888.75
159	(10)	Private Diagnostic Clinic (Duke Uni-	
160		versity Medical Center)	\$ 399.18
161	(11)	Harry Wells	\$ 3,423.80
162	(12)	Arthur White	\$ 5,217.75
163	(k)	Claims against the Governor's Office—	
164		Emergency Flood Disaster Relief:	
165		(To be paid from General Revenue Fund)	
166	(1)	Gladys Barfield	\$ 700.16
167	(2)	Thelma J. Stone	\$ 2,500.00
168	(3)	Patricia Wilson, George P. Wilson, and	
169		Gladys V. Wilson	\$ 1,200.00
170	(4)	Alert Sanitation	\$ 2,350.00
171	(5)	Alex Ray	\$ 1,175.00
172	(6)	Robert L. and Mae Massie	\$ 465.00
173	(l)	Claim against the Public Service	
174		Commission:	
175		(To be paid from Special Revenue Fund)	
176	(1)	Transport Motor Express, Inc.	\$ 837.00
177	(m)	Claim against the Treasury Department:	
178		(To be paid from General Revenue Fund)	
179	(1)	Patrick Plaza Dodge, Inc.	\$ 142.50

180 The Legislature finds that the above moral obligations
 181 and the appropriation made in satisfaction thereof shall
 182 be the full compensation for all claimants, and that
 183 prior to the payments to any claimant provided for in
 184 this bill, the court of claims shall receive a release from
 185 said claimant releasing any and all claims for moral
 186 obligations arising from the matters considered by the
 187 Legislature in the finding of the moral obligations and
 188 the making of the appropriations for said claimant. The
 189 court of claims shall deliver all releases obtained from
 190 claimants to the department against which the claim
 191 was allowed.

CHAPTER 17

(S. B. 524—By Mr. Hanlon and Mr. Hinkle)

[Passed March 7, 1979; 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 board of regents, department of corrections, department of health, department of public safety, and the secretary of state to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commodities
3 and services rendered by certain claimants herein and
4 has considered claims against the state, the board of re-
5 gents, department of corrections, department of health,
6 department of public safety, and the secretary of state,
7 agencies thereof, which have arisen due to overexpendi-
8 tures of departmental appropriations by officers of such
9 state spending units, such claims having been previously
10 considered by the court of claims which also found that
11 the state has received the benefit of the commodities and
12 services rendered by each claimant, but were denied by
13 the court of claims on the purely statutory grounds that
14 to allow such claims would be condoning illegal acts con-
15 trary to the laws of the state. The Legislature, pursuant
16 to its findings of fact and also by the adoption of the find-
17 ings of fact by the court of claims as its own, and, while
18 not condoning such illegal acts, hereby declares it to be
19 the moral obligation of the state to pay each such claim in
20 the amount specified below, and directs the auditor to
21 issue warrants upon receipt of a properly executed requi-
22 sition supported by an itemized invoice, statement or

23 other satisfactory document as required by section ten,
24 article three, chapter twelve of the code of West Vir-
25 ginia, one thousand nine hundred thirty-one, as amended,
26 for the payment thereof out of any fund appropriated and
27 available for the purpose.

28	(a) Claims against the Board of Regents:	
29	(To be paid from General Revenue Fund)	
30	(1) Capitol Business Equipment, Inc. ... \$	951.06
31	(b) Claims against the Department of Corrections:	
32	(To be paid from General Revenue Fund)	
33	(1) Alling & Cory	\$ 4,401.40
34	(2) IBM Corporation	\$ 3,962.30
35	(3) Physicians Fee Office	\$ 2,956.50
36	(c) Claims against the Department of Health:	
37	(To be paid from General Revenue Fund)	
38	(1) Charleston Area Medical Center, Inc.	\$20,000.00
39	(d) Claims against the Department of Public Safety:	
40	(To be paid from General Revenue Fund)	
41	(1) The County Commission of Mason	
42	County	\$ 3,600.00
43	(2) R. L. Smith, d/b/a Architectural	
44	Associates	\$ 879.91
45	(e) Claims against the Secretary of State:	
46	(To be paid from General Revenue Fund)	
47	(1) Eastman Kodak Co.	\$ 275.00
48	(2) Texaco, Inc.	\$ 33.09
49	TOTAL	\$37,059.26

CHAPTER 18

(S. B. 338—By Mr. Rogers)

[Passed March 9, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two,
article one, chapter forty-six-a of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred seven and one hundred eleven, article four of said chapter, all relating to the West Virginia consumer credit and protection act; loan finance charge for supervised lenders; maximum interest when loan is in excess of one thousand five hundred dollars.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Short Title, Definitions and General Provisions.
4. Supervised Lenders.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-102. General definitions.

1 In addition to definitions appearing in subsequent
2 articles, in this chapter:

3 (1) "Actuarial method" means the method, defined
4 by rules adopted by the commissioner, of allocating pay-
5 ments made on a debt between principal or amount
6 financed and loan finance charge or sales finance charge
7 pursuant to which a payment is applied first to the ac-
8 cumulated loan finance charge or sales finance charge
9 and the balance is applied to the unpaid principal or
10 unpaid amount financed.

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

16 (3) "Agricultural purpose" means a purpose related
17 to the production, harvest, exhibition, marketing, trans-

18 portation, processing or manufacture of agricultural
19 products by a natural person who cultivates, plants,
20 propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural,
21 viticultural and dairy products, livestock, wildlife,
22 poultry, bees, forest products, fish and shellfish, and
23 any products thereof, including processed and manufactured products, and any and all products raised or
24 produced on farms and any processed or manufactured
25 products thereof.

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

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

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

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

38 (i) Any applicable sales, use, privilege, excise or
39 documentary stamp taxes;

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

43 (iii) Additional charges permitted by this chapter.

44 (5) "Average daily balance" in a billing cycle for
45 which a sales finance charge or loan finance charge is
46 made is the sum of the amount unpaid each day during
47 that cycle divided by the number of days in that cycle.
48 The amount unpaid on a day is determined by adding
49 to the balance, if any, unpaid as of the beginning of
50 that day all purchases and other debits and deducting
51 all payments and other credits made or received as of
52 that day.

53 (6) The "cash price" of goods, services or an interest

54 in land means the price at which the goods, services or
55 interest in land are offered for sale by the seller to cash
56 buyers in the ordinary course of business, and may in-
57 clude (a) applicable sales, use, privilege, and excise
58 and documentary stamp taxes, (b) the cash price of
59 accessories or related services such as delivery, installa-
60 tion, servicing, repairs, alterations and improvements,
61 and (c) amounts actually paid or to be paid by the
62 seller for registration, certificate of title, or license fees.

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

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

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

69 (c) Escrows for future payments of taxes and insur-
70 ance;

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

73 (e) Appraisal fees; and

74 (f) Credit reports.

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

77 (9) "Commissioner" means the commissioner of bank-
78 ing of West Virginia.

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

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

87 (12) (a) Except as provided in paragraph (b), "con-
88 sumer credit sale" is a sale of goods, services or an
89 interest in land in which:

- 90 (i) Credit is granted either by a seller who regularly
91 engages as a seller in credit transactions of the same
92 kind or pursuant to a seller credit card;
- 93 (ii) The buyer is a person other than an organization;
- 94 (iii) The goods, services or interest in land are pur-
95 chased primarily for a personal, family, household or
96 agricultural purpose;
- 97 (iv) Either the debt is payable in installments or a
98 sales finance charge is made; and
- 99 (v) With respect to a sale of goods or services, the
100 amount financed does not exceed twenty-five thousand
101 dollars.
- 102 (b) "Consumer credit sale" does not include a sale in
103 which the seller allows the buyer to purchase goods or
104 services pursuant to a lender credit card or similar
105 arrangement.
- 106 (13) (a) "Consumer lease" means a lease of goods:
- 107 (i) Which a lessor regularly engaged in the business
108 of leasing makes to a person, other than an organization,
109 who takes under the lease primarily for a personal,
110 family, household or agricultural purpose;
- 111 (ii) In which the amount payable under the lease
112 does not exceed twenty-five thousand dollars; and
- 113 (iii) Which is for a term exceeding four months.
- 114 (b) "Consumer lease" does not include a lease made
115 pursuant to a lender credit card or similar arrangement.
- 116 (14) "Consumer loan" is a loan made by a person
117 regularly engaged in the business of making loans in
118 which:
- 119 (a) The debtor is a person other than an organiza-
120 tion;
- 121 (b) The debt is incurred primarily for a personal,
122 family, household or agricultural purpose;

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

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

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

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

137 (17) "Federal Consumer Credit Protection Act" means
138 the "Consumer Credit Protection Act" (Public Law
139 90-321; 82 Stat. 146), as amended, and includes regula-
140 tions issued pursuant to that act.

141 (18) "Goods" includes goods not in existence at the
142 time the transaction is entered into and gift and mer-
143 chandise certificates, but excludes money, chattel paper,
144 documents of title and instruments.

145 (19) "Home solicitation sale" means a consumer credit
146 sale in excess of twenty-five dollars in which the buyer
147 receives a solicitation of the sale at a place other than
148 the seller's business establishment at a fixed location
149 and the buyer's agreement or offer to purchase is there
150 given to the seller or a person acting for the seller. The
151 term does not include a sale made pursuant to a pre-
152 existing open-end-credit account with the seller in
153 existence for at least three months prior to the transac-
154 tion, a sale made pursuant to prior negotiations between
155 the parties at the seller's business establishment at a
156 fixed location, a sale of motor vehicles, mobile homes or
157 farm equipment or a sale which may be rescinded under
158 the Federal Truth in Lending Act (being Title I of the
159 Federal Consumer Credit Protection Act). A sale which

160 would be a home solicitation sale if credit were extended
161 by the seller is a home solicitation sale although the
162 goods or services are paid for in whole or in part by a
163 consumer loan in which the creditor is subject to claims
164 and defenses arising from the sale.

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

169 (21) "Lender credit card or similar arrangement"
170 means an arrangement or loan agreement, other than a
171 seller credit card, pursuant to which a lender gives a
172 debtor the privilege of using a credit card, letter of credit,
173 or other credit confirmation or identification in transac-
174 tions out of which debt arises:

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

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

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

182 (22) "Loan" includes:

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

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

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

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

193 (23) (a) "Loan finance charge" means the sum of
194 (i) all charges payable directly or indirectly by the

195 debtor and imposed directly or indirectly by the lender
196 as an incident to the extension of credit, including any
197 of the following types of charges which are applicable:
198 Interest or any amount payable under a point, discount,
199 or other system of charges, however denominated,
200 premium or other charge for any guarantee or insurance
201 protecting the lender against the consumer's default or
202 other credit loss; and (ii) charges incurred for investi-
203 gating the collateral or credit-worthiness of the con-
204 sumer or for commissions or brokerage for obtaining
205 the credit, irrespective of the person to whom the charges
206 are paid or payable, unless the lender had no notice
207 of the charges when the loan was made. The term
208 does not include charges as a result of default, addi-
209 tional charges, delinquency charges or deferral charges.

210 (b) If a lender makes a loan to a consumer by pur-
211 chasing or satisfying obligations of the consumer pur-
212 suant to a lender credit card or similar arrangement,
213 and the purchase or satisfaction is made at less than
214 the face amount of the obligation, the discount is not
215 part of the loan finance charge.

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

220 (25) "Official fees" means:

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

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

233 (26) "Organization" means a corporation, government
234 or governmental subdivision or agency, trust, estate,
235 partnership, cooperative or association.

236 (27) "Payable in installments" means that payment
237 is required or permitted by agreement to be made in (a)
238 two or more periodic payments, excluding a down pay-
239 ment, with respect to a debt arising from a consumer
240 credit sale pursuant to which a sales finance charge is
241 made, (b) four or more periodic payments, excluding a
242 down payment, with respect to a debt arising from a
243 consumer credit sale pursuant to which no sales finance
244 charge is made, or (c) two or more periodic payments
245 with respect to a debt arising from a consumer loan. If
246 any periodic payment other than the down payment
247 under an agreement requiring or permitting two or more
248 periodic payments is more than twice the amount of
249 any other periodic payment, excluding the down pay-
250 ment, the consumer credit sale or consumer loan is "pay-
251 able in installments."

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

254 (29) "Person related to" with respect to an individual
255 means (a) the spouse of the individual, (b) a brother,
256 brother-in-law, sister or sister-in-law of the individual,
257 (c) an ancestor or lineal descendant of the individual
258 or his spouse, and (d) any other relative, by blood or
259 marriage, of the individual or his spouse who shares the
260 same home with the individual. "Person related to" with
261 respect to an organization means (a) a person directly
262 or indirectly controlling, controlled by or under common
263 control with the organization, (b) an officer or director
264 of the organization or a person performing similar func-
265 tions with respect to the organization or to a person
266 related to the organization, (c) the spouse of a person
267 related to the organization, and (d) a relative by blood
268 or marriage of a person related to the organization who
269 shares the same home with him.

270 (30) "Precomputed loan." A loan, refinancing or con-
271 solidation is "precomputed" if the debt is expressed as a

272 sum comprising the principal and the amount of the loan
273 finance charge computed in advance.

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

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

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

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

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

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

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

291 (ii) Additional charges permitted by this chapter.

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

301 (35) "Revolving loan account" means an arrangement
302 between a lender and a consumer including, but not
303 limited to, a lender credit card or similar arrangement,
304 pursuant to which (a) the lender may permit the con-
305 sumer to obtain loans from time to time, (b) the unpaid
306 balances of principal and the loan finance and other

307 appropriate charges are debited to an account, (c) a loan
308 finance charge if made is not precomputed but is com-
309 puted periodically on the outstanding unpaid balances
310 of the principal of the consumer's account from time to
311 time, and (d) there is the privilege of paying the balances
312 in installments.

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

322 (37) "Sale of an interest in land" includes a lease in
323 which the lessee has an option to purchase the interest
324 and all or a substantial part of the rental or other pay-
325 ments previously made by him are applied to the pur-
326 chase price.

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

330 (39) "Sales finance charge" means the sum of (a) all
331 charges payable directly or indirectly by the buyer and
332 imposed directly or indirectly by the seller or issuer of a
333 seller credit card as an incident to the extension of
334 credit, including any of the following types of charges
335 which are applicable: Time-price differential, however
336 denominated, including service, carrying or other charge,
337 premium or other charge for any guarantee or insurance
338 protecting the seller against the buyer's default or other
339 credit loss, and (b) charges incurred for investigating
340 the collateral or credit-worthiness of the buyer or for
341 commissions or brokerage for obtaining the credit, irre-
342 spective of the person to whom the charges are paid or
343 payable; unless the seller had no notice of the charges
344 when the credit was granted. The term does not include

345 charges as a result of default, additional charges, delin-
346 quency charges or deferral charges. If the seller or
347 issuer of a seller credit card purchases or satisfies obliga-
348 tions of the consumer and the purchase or satisfaction is
349 made at less than the face amount of the obligation, the
350 discount is not part of the sales finance charge.

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

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

364 (42) "Services" includes (a) work, labor and other
365 personal services, (b) privileges with respect to trans-
366 portation, use of vehicles, hotel and restaurant accom-
367 modations, education, entertainment, recreation, physical
368 culture, hospital accommodations, funerals, cemetery
369 accommodations, and the like, and (c) insurance.

370 (43) "Supervised financial organization" means a per-
371 son, other than a supervised lender or an insurance
372 company or other organization primarily engaged in an
373 insurance business:

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

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

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

383 (45) "Supervised loan" means a consumer loan made
384 by other than a supervised financial organization, in-
385 cluding a loan made pursuant to a revolving loan account,
386 where the principal does not exceed one thousand five
387 hundred dollars and in which the rate of the loan finance
388 charge exceeds eight percent per year as determined
389 according to the actuarial method.

ARTICLE 4. SUPERVISED LENDERS.

§46A-4-107. Loan finance charge for supervised lenders.

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

§46A-4-107. Loan finance charge for supervised lenders.

1 (1) With respect to a supervised loan, including a
2 revolving loan account, a supervised lender may con-
3 tract for and receive a loan finance charge not exceeding
4 that permitted by this section.

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

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

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

14 (c) Eighteen percent per year on that part of the
15 unpaid balances of the principal which is more than
16 twelve hundred dollars.

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

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

25 (b) The effect of prepayment, refinancing or con-
26 solidation is governed by the provisions on rebate upon
27 prepayment, refinancing or consolidation contained in
28 section one hundred eleven, article three of this chapter.

29 (4) For the purposes of this section, the term of a
30 loan commences on the date the loan is made. Differ-
31 ences in the lengths of months are disregarded and a
32 day may be counted as one thirtieth of a month. Subject
33 to classifications and differentiations the licensee may
34 reasonably establish, a part of a month in excess of
35 fifteen days may be treated as a full month if periods
36 of fifteen days or less are disregarded and if that pro-
37 cedure is not consistently used to obtain a greater yield
38 than would otherwise be permitted.

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

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

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

52 (6) With respect to a revolving loan account:

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

57 (i) The average daily balance of the debt,

58 (ii) The balance of the debt at the beginning of the
59 first day of the billing cycle, less all payments on and
60 credits to such debt during such billing cycle and ex-

61 cluding all additional borrowings during such billing
62 cycle, or

63 (iii) Subject to subsection (5), the median amount
64 within a specified range within which the average daily
65 balance of the debt or the balance of the debt at the
66 beginning of the first day of the billing cycle, less all
67 payments on and credits to such debt during such billing
68 cycle and excluding all additional borrowings during
69 such billing cycle, is included. For the purpose of this
70 subdivision (a) a billing cycle is monthly if the billing
71 statement dates are on the same day each month or do
72 not vary by more than four days therefrom.

73 (b) If the billing cycle is not monthly, the maximum
74 loan finance charge which may be made by a supervised
75 lender is that percentage which bears the same relation
76 to an applicable monthly percentage as the number of
77 days in the billing cycle bears to thirty.

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

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

1 No licensee shall directly or indirectly charge, contract
2 for, or receive any interest, discount or consideration
3 greater than six percent per annum upon the loan, use
4 or forbearance of money, goods or things in action, or
5 upon the loan, use or sale of credit, when the amount or
6 value thereof is more than one thousand five hundred
7 dollars. The foregoing prohibition shall also apply to

8 any licensee who permits any person, as borrower or as
9 endorser, guarantor or surety for any borrower, or
10 otherwise, to owe directly or contingently, or both, to
11 the licensee at any time the sum of more than one
12 thousand five hundred dollars for principal.

CHAPTER 19

(H. B. 1060—By Mr. Albright)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred four, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the applicability of the West Virginia consumer credit and protection act to certain consumer transactions involving revolving charge and loan accounts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-104. Application.

1 (1) This chapter applies if a consumer, who is a resident
2 of this state, is induced to enter into a consumer credit sale
3 made pursuant to a revolving charge account or to enter into
4 a revolving charge account or to enter into a consumer loan
5 made pursuant to a revolving loan account, by personal or
6 mail solicitation, and the goods, services or proceeds are
7 delivered to the consumer in this state and payment on such
8 account is to be made from this state.

9 (2) With respect to consumer credit sales or consumer
10 loans consummated in another state, a creditor may not

- 11 collect in an action brought in this state a sales finance charge
- 12 or loan finance charge in excess of that permitted by this
- 13 chapter.

CHAPTER 20

(H. B. 1325—By Mr. Speaker, Mr. See)

[Passed February 23, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred ten, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding the substance pentazocine to schedule four of the controlled substances law.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-210. Schedule IV.

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

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

- 9 (1) Barbital;
- 10 (2) Chloral betaine;
- 11 (3) Chloral hydrate;

- 12 (4) Ethchlorvynol;
- 13 (5) Ethinamate;
- 14 (6) Methohexital;
- 15 (7) Meprobamate;
- 16 (8) Methylphenobarbital, as methobarbital;
- 17 (9) Paraldehyde;
- 18 (10) Petrichloral;
- 19 (11) Phenobarbital;
- 20 (12) Lorazepam;
- 21 (13) Mebutamate;
- 22 (14) Clorazepate;
- 23 (15) Chlordiazepoxide;
- 24 (16) Clonazepam;
- 25 (17) Diazepam;
- 26 (18) Flurazepam;
- 27 (19) Oxazepam;
- 28 (20) Prazepam;
- 29 (21) Pentazocine.

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

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

- 44 (1) Diethylpropion;
- 45 (2) Phentermine;
- 46 (3) Pemoline (including organometallic complexes and che-
47 lates thereof);
- 48 (4) Dextropropoxyphene (alpha—(+)—4—dimethylamino
49 —1, 2—diphenyl—3—methyl—2—propionoxybutane).

CHAPTER 21

(S. B. 57—By Mr. Steptoe)

[Passed January 24, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-nine, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to foreign corporations; relating to admission and qualification of foreign corporations to conduct affairs or do or transact business in this state; relating to activities of foreign corporations permitted to be done in this state without a certificate of authority; and correcting "county" to "country" and an erroneous reference to another section of the code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-49. Admission of foreign corporation; acts permitted to be done without certificate of authority.

1 (a) No foreign corporation shall have the right to
2 conduct affairs or do or transact business in this state
3 until it shall have procured a certificate of authority so
4 to do from the secretary of state. No foreign corporation
5 shall be entitled to procure a certificate of authority
6 under this article to conduct affairs or do or transact any
7 business in this state which would not be permitted to be
8 conducted, done or transacted by a corporation organized
9 under this article. A foreign corporation shall not be
10 denied a certificate of authority by reason of the fact that
11 the laws of the state or country under which such
12 corporation is organized governing its organization and
13 internal affairs differ from the laws of this state, and
14 nothing in this article contained shall be construed to
15 authorize this state to regulate the organization or the
16 internal affairs of such corporation.

17 (b) Without excluding other activities which may not
18 constitute conducting affairs or doing or transacting
19 business in this state, a foreign corporation shall not be
20 considered to be conducting affairs or doing or transacting
21 business in this state, for the purposes of this article, by
22 reason of carrying on in this state any one or more of the
23 following activities:

24 (1) Maintaining or defending any legal action or
25 proceeding or any administrative or arbitration proceed-
26 ing, or effecting the settlement thereof or the settlement
27 of claims or disputes;

28 (2) Holding meetings of its directors, shareholders or
29 members or carrying on other activities concerning its
30 internal affairs;

31 (3) Maintaining bank accounts;

32 (4) Creating evidences of debt, mortgages or liens on
33 real or personal property;

34 (5) Securing or collecting debts or enforcing any
35 rights in property securing the same;

36 (6) Conducting its affairs or doing or transacting busi-
37 ness in interstate commerce;

38 (7) Granting funds or other gifts;

39 (8) Distributing information to its shareholders or
40 members; or

41 (9) Conducting an isolated transaction completed
42 within a period of thirty days and not in the course of a
43 number of repeated transactions of like nature.

44 (c) In addition to those activities enumerated in sub-
45 section (b) of this section, a foreign corporation shall
46 not be considered to be conducting affairs or doing or
47 transacting business in this state, for the purposes of this
48 article, by reason of carrying on in this state one or more
49 of the following activities:

50 (1) Maintaining offices or agencies for the transfer,
51 exchange and registration of its securities, or appointing

52 and maintaining trustees or depositaries with relation to
53 its securities;

54 (2) Effecting sales through independent contractors;
55 or

56 (3) Soliciting or procuring orders, whether by mail or
57 through employees or agents or otherwise, where such
58 orders require acceptance without this state before be-
59 coming binding contracts.

60 (d) In addition to those activities enumerated in sub-
61 sections (b) and (c) of this section, a foreign corporation
62 shall not be considered to be conducting affairs or doing
63 or transacting business in this state, for the purposes of
64 this article, by reason of carrying on in this state one
65 or more of the following activities:

66 (1) The acquisition by purchase of loans secured by
67 mortgages or deeds of trust, drawn and executed in
68 compliance with section two, article one, chapter thirty-
69 eight of this code on real or personal property situated
70 in West Virginia pursuant to commitment agreements
71 or arrangements made prior to or following the origina-
72 tion or creation of said loans;

73 (2) The ownership, modification, renewal, extension,
74 transfer or foreclosure of such loans, or the acceptance
75 of substitute or additional obligors thereon;

76 (3) The maintaining or defending of any actions or
77 suits relative to such loans, mortgages or deeds of trust;

78 (4) The maintenance of bank accounts in West Vir-
79 ginia banks in connection with the collection or servicing
80 of such loans;

81 (5) The making, collection and servicing of such loans
82 through a resident person, firm or corporation, or a for-
83 eign corporation qualified to do business in West Virginia,
84 engaged in the business of servicing loans for investors;

85 (6) The taking of deeds to the mortgaged property
86 either in lieu of foreclosure or for the purpose of trans-
87 ferring title either to the federal housing administration

88 or to the veterans administration as the insurer or
89 guarantor;

90 (7) The acquisition of title to property under fore-
91 closure sale or from the owner in lieu of foreclosure;

92 (8) The management, rental, maintenance and sale, or
93 the operating, maintaining, renting or otherwise dealing
94 with, selling or disposing of property acquired under
95 foreclosure sale or by agreement in lieu thereof;

96 (9) Physical inspection and appraisal of property in
97 West Virginia as security for deeds of trust or mortgages
98 and negotiations for the purchase of such loans;

99 (10) Any other transaction directly related to the
100 activities above described: *Provided*, That if property
101 acquired in or by reason of any of the activities defined in
102 the provisions of subdivisions (6), (7) and (8) of this
103 subsection shall be held longer than a period of five years,
104 the provisions of this section shall thereafter be inappli-
105 cable.

CHAPTER 22

(H. B. 1254—By Miss Shuman and Mr. Schifano)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to commutation of sentence for good conduct, classification of prisoners, and changing the name and composition of the prison classification committees and disciplinary committees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. THE PENITENTIARY.**§28-5-28. Commutation for good conduct.**

1 In order to encourage prison discipline, a distinction may be
2 made in the treatment of prisoners so as to extend to all such
3 as are orderly, industrious and obedient, comforts and privi-
4 leges according to their merit. The reward to be bestowed on
5 prisoners for good conduct shall consist of such relaxation of
6 strict prison rules and extension of social privileges as may
7 be consistent with proper discipline. Commutation of time for
8 good conduct, industry and obedience shall be granted by the
9 superintendent, and twenty days per month deduction shall be
10 made from the term or terms of sentences of all prisoners in
11 Class I, and ten days per month deduction shall be made from
12 the term or terms of sentences of all prisoners in Class II as
13 hereinafter provided, when no charge of misconduct has been
14 sustained against a prisoner. A prisoner under two or more
15 cumulative sentences shall be allowed commutation as if they
16 were all one sentence. For each sustained charge of miscon-
17 duct in violation of any rule known to the prisoner, including
18 escape or attempt to escape, any part or all of the commutation
19 which shall have accrued in favor of the prisoner to the date of
20 said misconduct may be forfeited and taken away by the sup-
21 erintendent upon the recommendation of the commutation
22 committee or the overtime work assignment committee which
23 are hereinafter established unless, in case of escape, the priso-
24 ner voluntarily returns without expense to the state, such for-
25 feiture shall be set aside by the superintendent. No overtime
26 allowance or credits, in addition to the commutation of time
27 herein provided for good conduct, may be deducted from the
28 term or terms of sentences with the exception that for extra
29 meritorious conduct on the part of any prisoner, he may be
30 recommended to the board of probation and parole and to the
31 governor for increased commutation or for a pardon or
32 parole.

33 There is hereby established a commutation committee of
34 three members which shall be composed of the associate or
35 deputy superintendent, teacher, counselor or ranking correc-
36 tional officer as may be determined by the commissioner.

37 The commutation committee, as soon as practicable, shall
38 classify all prisoners according to their industry, conduct and
39 obedience in four classifications: Class I, Class II, Class III,
40 Class IV and reclassify any of such prisoners from time to time
41 as in their opinion the circumstances may require. Class III
42 are those prisoners who have not performed in areas of assign-
43 ments or have displayed misconduct and will receive no com-
44 mutation of time while in this class. Class IV, special exempt,
45 are those prisoners impaired because of age, mental or phy-
46 sical restrictions, confinement in a protection unit, in out-to-
47 court or out-to-hospital status, or for any other reason deter-
48 mined by the commutation committee, and who may, if con-
49 duct warrants, be awarded deductions in accordance with the
50 limits of Class I or Class II classification. The superintendent
51 shall keep or cause to be kept a conduct record in card or
52 ledger form and a calendar card on each inmate showing all
53 classifications, changes of classifications and forfeitures of
54 commutation of time and reasons therefor. As soon as practi-
55 cable, the superintendent shall change the conduct records of
56 prisoners now in the penitentiary to conform with said conduct
57 record and calendar card.

58 There is hereby established an overtime work assignment
59 committee of three members which shall be composed of the
60 deputy or associate superintendent, teacher, counselor or
61 ranking correctional officer as may be determined by the com-
62 missioner. Should any prisoner be removed from any overtime
63 job assignment because of misconduct, an appeal shall lie
64 to the overtime work assignment committee, and in the event
65 of an adverse decision by this committee, the prisoner so re-
66 moved by reason of misconduct shall have the right to appeal
67 to the commissioner, whose decision shall be final.

68 When present overtime job assignments carrying more than
69 twenty days per month credit are vacated by the present in-
70 cumbent for any reason, said job assignment shall not be re-
71 newed for a credit of more than twenty days per calendar
72 month.

73 Ten days' commutation of time for good conduct may be
74 awarded to a prisoner for the time credited by the court as time

- 75 served on the sentence or sentences in local correctional fa-
76 cilities for each month so credited.

CHAPTER 23

(H. B. 781—By Mr. Caudle and Mrs. Neal)

[Passed March 10, 1979; 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-y, relating to county commissions; and authorizing county commissions to grant funds for nutritional programs operated by nonprofit legal entities.

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-y, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3y. Authority to grant funds to nutrition programs.

- 1 In addition to all other powers and duties now conferred by
- 2 law upon county commissions, such commissions are hereby
- 3 authorized and empowered to make grants from general
- 4 county revenues and any other revenues of the county avail-
- 5 able for such purposes, for nutritional programs operated by
- 6 nonprofit legal entities.

CHAPTER 24

(H. B. 1509—By Mr. Toney)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mileage allowance for county officials and their assistants, deputies and employees when utilizing their personally owned vehicles in the actual performance and discharge of their official duties and increasing such allowance to seventeen cents per mile.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article seven, 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 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-16. Mileage allowance for county officials, their assistants, deputies and employees.

1 The county commission of each county shall allow to each
2 county official and to their deputies, assistants and employees,
3 when they are required to drive their personally owned ve-
4 hicles in the actual performance and discharge of their offi-
5 cial duties, reimbursement at the rate of seventeen cents for
6 each mile traveled in their personally owned vehicles.

7 Every county official shall file monthly, under oath, a
8 full and accurate account of all the actual mileage driven by
9 him, his deputies, assistants and employees, in the perfor-
10 mance and discharge of their official duties supported by
11 verified accounts before reimbursement thereof shall be allowed
12 by the county commission. Reimbursement, properly allowed,
13 shall be made from the general county fund.

CHAPTER 25

(H. B. 1243—By Mr. McCuskey and Mr. Riffle)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the county commission or municipal corporations in the county to transfer to the county development authority any property for or adaptable to use in recreational development.

Be it enacted by the Legislature of West Virginia:

That section eleven, article twelve, 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 12. COUNTY DEVELOPMENT AUTHORITIES.

§7-12-11. Participation and appropriations authorized; transfers and conveyances of property.

1 The county commission is hereby authorized and empowered
2 to appoint members of the said authority and the county com-
3 mission and any municipality therein, or any one or more of
4 them, jointly and severally, are hereby authorized and empow-
5 ered to contribute by appropriation from their respective gen-
6 eral funds not otherwise appropriated to the cost of the opera-
7 tion and projects of the authority.

8 The county commission of the county or municipal corpora-
9 tions therein are hereby authorized and empowered to transfer
10 and convey to the said authority property of any kind hereto-
11 fore acquired by said county commission or municipal corpora-
12 tion for or adaptable to use in industrial, economic and recrea-
13 tional development, such transfers or conveyances to be without
14 consideration or for such price and upon such terms and condi-
15 tions as the said county commission or municipal corporation
16 shall deem proper.

CHAPTER 26

(Com. Sub. for S. B. 170—By Mr. Benson and Mr. Oates)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article two of said chapter; to amend article nine of said chapter by adding thereto a new section, designated section six-c; and to amend and reenact section sixteen of said article nine; all relating to increasing the salaries of the justices of the supreme court and judges of the circuit courts; providing that retirement benefits for retired judges and justices not be increased by virtue of certain salary increases; and specifying severability.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article two of said chapter be amended and reenacted; that article nine of said chapter be amended by adding thereto a new section, designated section six-c; and that section sixteen of said article nine be amended and reenacted, all to read as follows:

Article

1. **Supreme Court of Appeals.**
2. **Circuit Courts and Circuit Judges.**
9. **Retirement System for Judges of Courts of Record.**

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

- 1 The salary of each of the justices of the supreme court
- 2 of appeals shall be thirty-eight thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.**§51-2-13. Salaries of judges of circuit courts.**

1 The salaries of the judges of the various circuit courts
2 shall be paid solely out of the state treasury. No county,
3 county commission, board of commissioners or other
4 political subdivisions shall supplement or add to such sal-
5 aries.

6 The annual salary of all circuit judges shall be thirty-
7 five thousand five hundred dollars per year.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-6c. Benefits for retired judges and justices not to be increased by virtue of certain salary increases.

§51-9-16. Severability of article.

§51-9-6c. Benefits for retired judges and justices not to be increased by virtue of certain salary increases.

1 No judge or justice receiving retirement benefits under
2 the provisions of sections six and six-a of this article shall
3 be entitled to an increase in benefits by virtue of any
4 increase in the salaries of the offices of circuit court
5 judge or justice of the supreme court of appeals enacted
6 after the first day of January, one thousand nine hundred
7 seventy-nine: *Provided*, That this section shall not apply
8 to a retired judge or justice who is disabled.

§51-9-16. Severability of article.

1 If any section, subsection, clause, phrase or require-
2 ment of this article is for any reason held to be unconsti-
3 tutional, such decision shall not affect the validity of the
4 remaining portions. The Legislature hereby declares that
5 it would have passed this article, and each section, sub-
6 section, sentence, clause or phrase and requirement there-
7 of, irrespective of the fact that any one or more sections,
8 subsections, clauses, phrases or requirements be declared
9 unconstitutional.

CHAPTER 27

(Com. Sub. for S. B. 305—By Mr. Susman, Mr. Williams, Mr. McGraw)
Mr. Rogers, Mr. Hamilton, Mr. Baylor, Mr. Benson and Mr. Gainer)

[Passed February 27, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing by one the number of judges in both the tenth and eleventh judicial circuits; providing for terms of office; initial appointment; and subsequent election of such new judges.

Be it enacted by the Legislature of West Virginia:

That section one, 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; JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following judi-
2 cial circuits with the following number of judges, which
3 number shall include those judges of statutory courts of
4 record of limited jurisdiction who became circuit court
5 judges by virtue of the judicial reorganization amend-
6 ment to the West Virginia constitution:

7 The counties of Brooke, Hancock and Ohio shall con-
8 stitute the first circuit and shall have four judges; the
9 counties of Marshall, Tyler and Wetzel shall constitute
10 the second circuit and shall have two judges; the counties
11 of Doddridge, Pleasants and Ritchie shall constitute the
12 third circuit and shall have one judge; the counties of
13 Wood and Wirt shall constitute the fourth circuit and
14 shall have three judges; the counties of Calhoun, Jackson
15 and Roane shall constitute the fifth circuit and shall have
16 one judge; the county of Cabell shall constitute the sixth
17 circuit and shall have four judges; the county of Logan

18 shall constitute the seventh circuit and shall have two
19 judges; the county of McDowell shall constitute the
20 eighth circuit and shall have two judges; the county of
21 Mercer shall constitute the ninth circuit and shall have
22 two judges; the county of Raleigh shall constitute the
23 tenth circuit and shall have three judges; the counties of
24 Greenbrier, Monroe, Pocahontas and Summers shall con-
25 stitute the eleventh circuit and shall have two judges; the
26 county of Fayette shall constitute the twelfth circuit and
27 shall have two judges; the county of Kanawha shall con-
28 stitute the thirteenth circuit and shall have seven judges;
29 the counties of Braxton, Clay, Gilmer and Webster shall
30 constitute the fourteenth circuit and shall have two
31 judges; the county of Harrison shall constitute the fif-
32 teenth circuit and shall have two judges; the county of
33 Marion shall constitute the sixteenth circuit and shall
34 have two judges; the county of Monongalia shall consti-
35 tute the seventeenth circuit and shall have two judges;
36 the county of Preston shall constitute the eighteenth
37 circuit and shall have one judge; the counties of Barbour
38 and Taylor shall constitute the nineteenth circuit and
39 shall have one judge; the county of Randolph shall con-
40 stitute the twentieth circuit and shall have one judge;
41 the counties of Grant, Mineral and Tucker shall consti-
42 tute the twenty-first circuit and shall have two judges;
43 the counties of Hampshire, Hardy and Pendleton shall
44 constitute the twenty-second circuit and shall have one
45 judge; the counties of Berkeley, Jefferson and Morgan
46 shall constitute the twenty-third circuit and shall have
47 one judge; the county of Wayne shall constitute the
48 twenty-fourth circuit and shall have one judge; the
49 counties of Lincoln and Boone shall constitute the twen-
50 ty-fifth circuit and shall have two judges; the counties of
51 Lewis and Upshur shall constitute the twenty-sixth cir-
52 cuit and shall have one judge; the county of Wyoming
53 shall constitute the twenty-seventh circuit and shall have
54 one judge; the county of Nicholas shall constitute the
55 twenty-eighth circuit and shall have one judge; the
56 counties of Mason and Putnam shall constitute the
57 twenty-ninth circuit and shall have two judges; the
58 county of Mingo shall constitute the thirtieth circuit and

59 shall have one judge; and the counties of Berkeley, Jef-
60 ferson and Morgan shall constitute the thirty-first circuit
61 and shall have one judge.

62 (b) Except as hereinafter provided, the terms of office
63 of all circuit court judges in office on the effective date
64 of this section, including the terms of office of the judges
65 of those statutory courts of record of limited jurisdiction
66 who became circuit court judges by virtue of the judicial
67 reorganization amendment to the West Virginia constitu-
68 tion, shall expire on the thirty-first day of December, one
69 thousand nine hundred eighty-four. Thereafter, the terms
70 of office of such circuit court judges shall be for eight
71 years, the first commencing on the first day of January,
72 one thousand nine hundred eighty-five, and ending on the
73 thirty-first day of December, one thousand nine hundred
74 ninety-two. Subsequent terms of said judges shall be for
75 eight years. The first term of office of the fourth circuit
76 court judge of the sixth circuit created by the provisions
77 of said subsection (a) shall commence on the first day of
78 July, one thousand nine hundred seventy-seven, and shall
79 end on the thirty-first day of December, one thousand
80 nine hundred seventy-eight. The second term of office of
81 said sixth circuit court judge shall commence on the first
82 day of January, one thousand nine hundred seventy-nine,
83 and shall end on the thirty-first day of December, one
84 thousand nine hundred eighty-four. Subsequent terms of
85 office of said sixth circuit court judge shall be for eight
86 years. The first term of office of the third circuit court
87 judge of the tenth circuit created by the provisions of
88 said subsection (a) shall commence on the first day of
89 July, one thousand nine hundred seventy-nine, and shall
90 end on the thirty-first day of December, one thousand
91 nine hundred eighty. The second term of office of said
92 tenth circuit judge shall commence on the first day of
93 January, one thousand nine hundred eighty-one, and
94 shall end on the thirty-first day of December, one thou-
95 sand nine hundred eighty-four. Subsequent terms of
96 office of said tenth circuit court judge shall be for eight
97 years.

98 The first term of office of the second circuit court

99 judge of the eleventh circuit created by the provisions of
100 said subsection (a) shall commence on the first day of
101 July, one thousand nine hundred seventy-nine, and shall
102 end on the thirty-first day of December, one thousand
103 nine hundred eighty. The second term of office of said
104 eleventh circuit judge shall commence on the first day
105 of January, one thousand nine hundred eighty-one, and
106 shall end on the thirty-first day of December, one thou-
107 sand nine hundred eighty-four. Subsequent terms of
108 office of said eleventh circuit court judge shall be for
109 eight years.

110 (c) The Legislature hereby finds and declares that the
111 purpose of this section is to implement the provisions of
112 the judicial reorganization amendment of the West Vir-
113 ginia constitution; that the terms of office of all circuit
114 court judges, including the judges of statutory courts of
115 record of limited jurisdiction who became circuit court
116 judges by virtue of the judicial reorganization amend-
117 ment to the West Virginia constitution, should expire on
118 the same date and such judges should be elected at the
119 same general election; that the legislative intent in pre-
120 senting said judicial reorganization amendment to the
121 voters of the state for ratification was that no judge of a
122 statutory court of record of limited jurisdiction who
123 would become a circuit court judge by virtue of said
124 judicial reorganization amendment would have his term
125 of office decreased by the ratification of said judicial re-
126 organization amendment or be forced to run for reelection
127 any sooner than he otherwise would have had to have
128 run for reelection if said judicial reorganization amend-
129 ment had not been ratified; and that said judicial reorga-
130 nization amendment was ratified by the voters of the
131 state at the same general election at which the judge of
132 the former intermediate court of Raleigh County and the
133 judge of the former intermediate court of Kanawha
134 County were elected. Consistent with such findings
135 and declarations, the terms of office of the judges of the
136 tenth and thirteenth judicial circuits who became circuit
137 court judges by virtue of the judicial reorganization
138 amendment to the West Virginia constitution, and who

139 were, respectively, the judges of the intermediate court
140 of Raleigh County and the intermediate court of Kana-
141 wha County, which terms commenced the first day of
142 January, one thousand nine hundred seventy-five, shall
143 expire on the thirty-first day of December, one thousand
144 nine hundred eighty-four.

145 (d) The election of every circuit court judge, except
146 as hereinafter provided, shall be held on the Tuesday
147 next after the first Monday in November, one thousand
148 nine hundred eighty-four, and every eighth year there-
149 after. The fourth circuit court judge of the sixth circuit
150 created by the provisions of subsection (a) of this section
151 shall be appointed originally by the governor according
152 to the provisions of section three, article ten, chapter
153 three of this code. The first election of said sixth circuit
154 court judge shall be held on the Tuesday next after the
155 first Monday in November, one thousand nine hundred
156 seventy-eight. The election for the third term of said
157 sixth circuit court judge shall be held on the Tuesday
158 next after the first Monday in November, one thousand
159 nine hundred eighty-four, and every eighth year there-
160 after. The third circuit judge of the tenth circuit created
161 by the provisions of subsection (a) of this section shall
162 be appointed originally by the governor according to the
163 provisions of section three, article ten, chapter three of
164 this code. The first election of the third tenth circuit
165 court judge shall be held on the Tuesday next after the
166 first Monday in November, one thousand nine hundred
167 eighty. The election for the third term of said tenth
168 circuit court judge shall be held on the Tuesday next
169 after the first Monday in November, one thousand nine
170 hundred eighty-four, and every eighth year thereafter.
171 The second circuit judge of the eleventh circuit created
172 by the provisions of subsection (a) of this section shall
173 be appointed originally by the governor according to
174 the provisions of section three, article ten, chapter three
175 of this code. The first election of the second eleventh
176 circuit court judge shall be held on the Tuesday next
177 after the first Monday in November, one thousand nine
178 hundred eighty. The election for the third term of said

179 eleventh circuit court judge shall be held on the Tuesday
180 next after the first Monday in November, one thousand
181 nine hundred eighty-four, and every eighth year there-
182 after.

183 (e) The terms of court of the circuit judges of the
184 counties aforesaid shall commence and be held as herein-
185 after provided.

186 (f) On or before January one, one thousand nine hun-
187 dred eighty-three, the supreme court of appeals of West
188 Virginia shall submit to the Legislature a plan for re-
189 arranging the circuits created in subsection (a) of this
190 section.

CHAPTER 28

(Com. Sub. for H. B. 706—By Mr. Albright and Mr. Tompkins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state chartered credit unions generally; the fiscal year of such credit unions; the voting procedures, including voting by proxy with respect to such credit unions; permitting annual meetings to be held any time between the first day of January and the thirty-first day of March; and the amending of the bylaws.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-7. Fiscal year; annual and special meetings; voting; proxies.

1 The fiscal year of every such corporation shall end at the
2 close of business on the thirty-first day of December. The

3 annual meeting of the corporation shall be held between the
4 first day of January and the thirty-first day of March, as may
5 be provided in the bylaws. Special meetings may be held by
6 order of the directors or of the supervisory committee, and
7 shall be held upon request, in writing, of ten percent of the
8 members. Notice of all meetings of the corporation shall be
9 given in the manner prescribed in the bylaws. At all meetings
10 of members, a member shall have but one vote, irrespective of
11 the number of shares held. No shareholder may vote by proxy,
12 but a society, association, copartnership or corporation, having
13 membership in a credit union, may be represented by one
14 person authorized by such society, association, copartnership
15 or corporation to so represent it. At any meeting the members
16 may decide upon any question of interest to the corporation,
17 and overrule the board of directors; and, by a three-fourths
18 vote of those present and represented, may amend the bylaws,
19 if the notice of the meeting shall have specified the question to
20 be considered.

CHAPTER 29

(Com. Sub. for H. B. 705—By Mr. Albright and Mr. Tompkins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the intervals and periods of which the board of directors of a credit union may declare dividends to be paid.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-21. When and how dividends paid.

1 At such intervals and for such periods not to exceed one

2 year as the board of directors may authorize, and after provi-
3 sion for the required reserves, the board of directors of a credit
4 union may declare dividends to be paid from the net earnings
5 on all fully paid shares outstanding at the close of the period
6 for which the dividend is declared. Shares which become fully
7 paid during such period shall be entitled to a proportional part
8 of such dividends calculated from the first day of the month
9 following such payment in full.

CHAPTER 30

(H. B. 1253—By Mr. Tucker and Mr. Tompkins)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dishonored checks; complaint; notice of complaint; issuance of warrant; payment procedure; costs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

1 After receipt of a complaint for warrant for a violation of
2 section thirty-nine or thirty-nine-a of this article the magis-
3 trate court shall proceed with the issuance of the warrant as is
4 provided by law: *Provided*, That no warrant shall issue for an
5 offense under sections thirty-nine or thirty-nine-a of this
6 article which, upon conviction, would be punishable as a mis-
7 demeanor, unless and until the payee or holder of the check,
8 draft or order which has been dishonored has sent notice

9 thereof to the drawer of the check, draft or order in accordance
10 with the provisions of section thirty-nine-e of this article, or
11 unless and until notice has been sent by the magistrate as
12 hereinafter provided. Proof that such notice was sent by the
13 payee or holder shall be evidenced by presentation of a return
14 receipt indicating that the notice was mailed to the drawer by
15 certified mail, or, in the event the mailed notice was not re-
16 ceived or was refused by the drawer, by presentation of the
17 mailed notice itself. The magistrate court shall receive and
18 hold the check, draft or order.

19 Upon receipt of a complaint for a misdemeanor warrant
20 unaccompanied by proof that notice was sent by the payee or
21 holder, the magistrate court shall immediately prepare and
22 mail to the drawer of such check, draft or order a notice in
23 form substantially as follows and shall impose additional
24 court costs in the amount of ten dollars. Such notice shall be
25 mailed to the drawer by United States mail, first class and
26 postpaid, at the address provided at the time of presenting such
27 check, draft or order. Service of such notice shall be complete
28 upon mailing. Such notice shall be in form substantially as
29 follows:

30 "You are hereby notified that a complaint for a warrant for
31 your arrest has been filed with this office to the following
32 effect and purpose by who upon
33 oath complains that on the day of
34 19....., you did unlawfully issue and deliver unto him a certain
35 check in the amount of drawn on
36 (name of bank)..... where you did not have funds
37 on deposit in or credit with said bank with which to pay the
38 same upon presentation and pray that a warrant issue and that
39 you be apprehended wherever you may be found by an officer
40 authorized to make such an arrest and dealt with in accor-
41 dance with the laws of the state of West Virginia.

42 A warrant for arrest will be issued on or after the
43 day of, 19.....

44 You can nullify the effect of said complaint and avoid arrest
45 by paying to the magistrate court clerk at
46 the amount due on said check and the costs of this proceeding

84 charged. Such costs shall be imposed in accordance with the
85 provisions of section two, article three, chapter fifty of this
86 code.

CHAPTER 31

(Com. Sub. for H. B. 926—By Mrs. Spears and Mr. Brown)

[Passed March 8, 1979; 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 eight-c, relating to the filming or photographing of minors engaging in sexually explicit conduct; defining certain terms with respect thereto; prohibiting the filming or photographing for financial gain of minors engaged in sexually explicit conduct and the using or permitting the use of minors for such purposes; prohibiting the exhibition or distribution of such films or photographs for financial gain; and providing for criminal penalties for violations of the article.

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 eight-c, to read as follows:

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-1. Definitions.

§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalties.

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalties.

§61-8C-1. Definitions.

- 1 For the purposes of this article:
- 2 (a) "Minor" means any child under eighteen years of age.

3 (b) "Knowledge" means knowing or having reasonable
4 cause to know which warrants further inspection or inquiry.

5 (c) "Sexually explicit conduct" includes any of the fol-
6 lowing, whether actually performed or simulated:

7 (1) Genital to genital intercourse;

8 (2) Fellatio;

9 (3) Cunnilingus;

10 (4) Anal intercourse;

11 (5) Oral to anal intercourse;

12 (6) Bestiality;

13 (7) Masturbation;

14 (8) Sadomasochistic abuse, including, but not limited to,
15 flagellation, torture or bondage; or

16 (9) Excretory functions in a sexual context.

17 (d) "Person" means an individual, partnership, firm, asso-
18 ciation, corporation or other legal entity.

**§61-8C-2. Use of minors in filming sexually explicit conduct pro-
hibited; penalties.**

1 (a) Any person who for financial gain causes or knowingly
2 permits, uses, persuades, induces, entices or coerces such
3 minor to engage in or uses such minor to do or assist in any
4 sexually explicit conduct shall be guilty of a felony when such
5 person has knowledge that any such act is being photographed
6 or filmed. Upon conviction thereof, such person shall be fined
7 not more than ten thousand dollars, or imprisoned in the
8 penitentiary not more than ten years, or both fined and im-
9 prisoned.

10 (b) Any person who for financial gain photographs or
11 films such minor engaging in any sexually explicit conduct
12 shall be guilty of a felony, and, upon conviction thereof, shall
13 be fined not more than ten thousand dollars, or imprisoned in
14 the penitentiary not more than ten years, or both fined and
15 imprisoned.

16 (c) Any parent, legal guardian or person having custody
 17 and control of a minor, who photographs or films such minor
 18 in any sexually explicit conduct or causes or knowingly per-
 19 mits, uses, persuades, induces, entices or coerces such minor
 20 child to engage in or assist in any sexually explicit act shall
 21 be guilty of a felony when such person has knowledge that any
 22 such act may be photographed or filmed. Upon conviction
 23 thereof, such person shall be fined not more than ten thou-
 24 sand dollars, or imprisoned in the penitentiary not more than
 25 ten years, or both fined and imprisoned.

**§61-8C-3. Distribution and exhibiting of material depicting minors
 engaged in sexually explicit conduct prohibited; pen-
 alties.**

1 (a) Any person who, for financial gain, with knowledge,
 2 sends or causes to be sent, or distributes, exhibits, or displays
 3 or transports with the intent to distribute, exhibit or display
 4 any material visually portraying a minor engaged in any sex-
 5 ually explicit conduct shall be guilty of a misdemeanor, and,
 6 upon conviction thereof, shall be imprisoned in the county
 7 jail not more than twelve months and fined not more than two
 8 thousand dollars.

9 (b) Any person previously convicted under this section and
 10 who is again convicted under this section, shall be guilty of a
 11 felony, and, upon conviction thereof, shall be imprisoned in
 12 the penitentiary for not more than two years, and fined not
 13 more than four thousand dollars.

CHAPTER 32

(S. B. 297—By Mr. Shaw and Mr. Jones)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article nine,
 chapter sixty-two of the code of West Virginia, one thou-
 sand nine hundred thirty-one, as amended, relating to
 indictments for burglary; burglary to commit other felo-

nies; form of indictment for burglary with the intent to commit sexual assault.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. FORMS OF INDICTMENTS.

§62-9-9. Indictment for burglary.

1 An indictment for burglary shall be sufficient if it be
2 in form, tenor or effect as follows (after following the
3 form in section one):

4 That A....., on the day of
5, nineteen, about the hour of
6, in the night of the same day, in the said
7 county of, the dwelling house of one
8 B, there situate, feloniously and
9 burglariously did break and enter, with intent the goods
10 and chattels of, in the said dwelling house
11 then and there being, then and there feloniously and
12 burglariously to steal, take and carry away; and then and
13 there in the said dwelling house, (here
14 name the property, money or goods), of the value of
15 (describing each article stolen and the value
16 thereof and the total value), of the goods and chattels (or
17 money) of the said B, (or whoever the goods
18 or money belonged to), in the said dwelling house then
19 and there found, then and there feloniously and burglar-
20 iously, did steal, take and carry away, against the peace
21 and dignity of the State.

22 And instead of describing burglary with intent to com-
23 mit larceny, the indictment may charge any other felony
24 thus: Burglary with intent to commit sexual assault or
25 sexual abuse, as, after the form herein is followed to the
26 charge of the offense, "with intent in the said dwelling
27 house feloniously and burglariously to sexually assault
28 (or sexually abuse)" "one C....., forcibly and against
29 his will," and "then and there in the said dwelling house
30 did feloniously and burglariously sexually assault (or

31 sexually abuse)" "the said C , forcibly and
 32 against his will, against the peace and dignity of the
 33 State." And burglary with intent to commit any felony
 34 may be charged in the same count.

35 An indictment for entering a dwelling house or an
 36 outhouse adjoining thereto, of another, in the nighttime
 37 without breaking, or in the daytime by breaking and
 38 entering, may be in the following form, tenor or effect
 39 (after following the form in section one):

40 That A....., on the day of
 41, nineteen, in the said
 42 county of, in the nighttime of said day, the
 43 dwelling house (or outhouse, etc., describing the same) of
 44 one B..... then and there found, did
 45 feloniously and burglariously enter without breaking (or,
 46 if it be in the daytime, use the words "in the daytime of
 47 said day," etc., "did feloniously and burglariously break
 48 and enter," etc.), with intent the goods and chattels of
 49 B..... therein found, feloniously and
 50 burglariously to take, steal and carry away; and then and
 51 there in the said dwelling house (or outhouse, etc.),
 52 one and one and
 53 dollars in money, etc., of the value
 54 of dollars, goods, chattels and money of
 55 the said B..... then and there found, did
 56 feloniously and burglariously take, steal and carry away,
 57 against the peace and dignity of the State.

58 And for entering without breaking, in the daytime, the
 59 same form shall be sufficient, without alleging therein
 60 that the act was done "burglariously."

CHAPTER 33

(S. B. 1—By Mr. Palumbo)

[Passed January 29, 1979; 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 the designation of daylight saving time as official time; and providing that daylight saving time commences on the last Sunday of April and terminates on the last Sunday of October.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. THE GOVERNOR.

§5-1-25. Designation of daylight saving time as official time.

1 Daylight saving time shall be the statewide official
2 time, commencing at two o'clock antemeridian on the
3 last Sunday of April and terminating at two o'clock
4 antemeridian on the last Sunday of October; said time
5 shall apply to all public schools, institutions of higher
6 learning, agencies, departments and political subdivisions
7 of the state.

CHAPTER 34

(Com. Sub. for H. B. 743—By Mrs. Hartman and Mrs. Wehrle)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to protection and relief for persons abused by members of their household; setting forth legislative findings and intent; providing definitions; relating to court jurisdiction; providing for procedures and relief; providing emergency provisions; providing for temporary protective orders; relating to enforcement and contempt penalties; providing exceptions; and providing that husband and wife may not refuse to testify on the ground that their communications with one another are privileged.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-1. Purpose.

§48-2A-2. Definitions.

§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.

§48-2A-4. Commencement of proceeding; counterclaim.

§48-2A-5. Temporary orders of court; hearings.

§48-2A-6. Protective orders.

§48-2A-7. Contempt.

§48-2A-8. Testimony of husband and wife.

§48-2A-1. Purpose.

1 The purpose of this article is to prevent continuing abuse of
 2 one family or household member at the hands of other family
 3 or household member. Nothing contained in this article shall
 4 be construed as affecting the abused party's rights of action
 5 or claims which are otherwise provided for in this code or by
 6 common law. An abusing party will remain subject to a
 7 damage claim or charges of criminal conduct. It is the intent
 8 of the Legislature to provide temporary and immediate relief
 9 for an abused party so that he or she may make rational de-
 10 cisions regarding their future, thus enabling them to initiate
 11 procedures for appropriate permanent remedies. It is further
 12 intended that no proceeding under this article shall be initiated
 13 during the pendency of a divorce action between the person
 14 seeking relief under the provisions of this article and the
 15 alleged defendant.

§48-2A-2. Definitions.

1 As used in this article, unless the context clearly requires
 2 otherwise:

3 (a) "Abuse" means the occurrence of one or more of
 4 the following acts between family or household members who
 5 reside together or who formerly resided together:

6 (1) Attempting to cause or intentionally, knowingly or

7 recklessly causing bodily injury with or without a dangerous
8 or deadly weapon.

9 (2) Placing by physical menace another in fear of im-
10 minent serious bodily injury.

11 (3) Sexually abusing a person under the age of eighteen
12 years.

13 (b) "Family or household members" means spouses, per-
14 sons living as spouses, persons who formerly resided as
15 spouses, parents, children and stepchildren, or other persons
16 related by consanguinity or affinity.

17 (c) "Sexual abuse" shall have the same meaning as the
18 definitions of "sexual assault" and "sexual abuse" in article
19 eight-b, chapter sixty-one of this code.

**§48-2A-3. Jurisdiction; effect of complaining party leaving resi-
dence; priority of petitions filed under this article.**

1 Circuit courts and magistrate courts, as constituted under
2 chapter fifty of this code, shall have concurrent jurisdiction
3 over proceedings under this article. The complaining party's
4 right to relief under this article shall not be affected by his or
5 her leaving the residence or household to avoid further abuse.
6 Any petition filed under the provisions of this article shall
7 be given priority over any other civil action before the court
8 except actions in which trial is in progress, and shall be
9 docketed immediately upon filing.

§48-2A-4. Commencement of proceeding; counterclaim.

1 (1) A person may seek relief under this article for himself
2 or herself, or any parent or adult household member may seek
3 relief under this article on behalf of a minor child, by filing
4 a verified petition alleging abuse by the respondent.

5 (2) The West Virginia supreme court of appeals shall
6 prescribe the form to be used for preparing a petition under
7 this article, and shall distribute such forms to the clerk of the
8 circuit court of each county within the state.

9 (3) The respondent named in any petition alleging abuse
10 may file a counterclaim or raise any affirmative defenses.

§48-2A-5. Temporary orders of court; hearings.

1 (1) Upon filing of a verified petition under this article, the
2 court may enter such temporary orders as it may deem neces-
3 sary to protect the complainant or minor children from abuse,
4 and, upon good cause shown, may do so ex parte without
5 the necessity of bond being given by the plaintiff. Clear and
6 convincing evidence of immediate and present danger of
7 abuse to the complainant or minor children shall constitute
8 good cause for purposes of this section. If the defendant is not
9 present at the proceeding, complainant or complainant's legal
10 representative shall certify to the court in writing, the efforts
11 which have been made to give notice to the defendant or just
12 cause why notice should not be required. Following such pro-
13 ceeding, the court shall order a copy of the petition to be
14 served immediately upon the defendant, together with a copy
15 of any protective order issued pursuant to the proceeding,
16 notice setting forth the time and place of the full hearing and
17 a statement of the right of the defendant to be present and to
18 be represented by counsel. Such initial protective order shall
19 remain effective until a full hearing is held.

20 (2) Within five days following the issuance of the court's
21 temporary order, a full hearing shall be held at which the
22 complainant must prove the allegation of abuse by a pre-
23 ponderance of the evidence, or such petition shall be dis-
24 missed. At such hearing, the court may make any protective
25 order or approve any consent agreement authorized by this
26 article.

27 (3) If a hearing is continued, the court may make or extend
28 such temporary orders as it deems necessary.

§48-2A-6. Protective orders.

1 (1) The court may grant any protective order it deems
2 necessary to bring about a cessation of abuse of the com-
3 plainant or minor children, which may include:

4 (a) Directing the defendant to refrain from abusing the
5 complainant or minor children;

6 (b) Granting possession to the complainant of the residence

7 or household to the exclusion of the defendant when the
8 residence or household is jointly owned or leased by the
9 parties;

10 (c) When the defendant has a duty to support the com-
11 plainant or minor children living in the residence or house-
12 hold and the defendant is the sole owner or lessee, granting
13 possession to the complainant of the residence or household
14 to the exclusion of the defendant or by consent agreement
15 allowing the defendant to provide suitable, alternate housing;

16 (d) Awarding temporary custody of or establishing tempo-
17 rary visitation rights with regard to minor children;

18 (e) Ordering the defendant to pay to the complainant a
19 sum for temporary support and maintenance of the abused
20 party. This order is of a temporary nature and, on the thir-
21 tieth day following issuance of the order, that portion of the
22 order requiring the defendant to pay support, becomes void
23 unless the beneficiary of that order has filed a petition for
24 divorce with a prayer for temporary support and maintenance
25 under section thirteen, article two, chapter forty-eight of this
26 code or has initiated an action for separate maintenance under
27 section twenty-eight, article two, chapter forty-eight of this
28 code. When there is a subsequent ruling on a petition for
29 support under section thirteen, article two, chapter forty-
30 eight of this code, that portion of the order requiring the
31 defendant to pay support shall become void.

32 (2) Any protective order shall be for a fixed period of time
33 not to exceed thirty days. The court may amend its order at
34 any time upon subsequent petition filed by either party.

35 (3) No order under this article shall in any manner affect
36 title to any real property.

37 Certified copies of any order made under the provisions of
38 this article shall be issued to the plaintiff, the defendant and
39 any law-enforcement agency having jurisdiction to enforce the
40 order or agreement, including the city police, the county
41 sheriff's office or local office of the state police.

§48-2A-7. Contempt.

1 (1) Upon violation of any order issued pursuant to this
 2 article, the court shall upon the filing of appropriate pleadings
 3 by or on behalf of any aggrieved party, issue an order to show
 4 cause why the person violating any provisions of the court's
 5 order should not be held in contempt of court and set a time
 6 for a hearing thereon within five days of the filing of said
 7 motion.

8 (2) Notwithstanding any other provision of law to the con-
 9 trary, any sentence for contempt hereunder may include im-
 10 prisonment up to thirty days and a fine not to exceed one
 11 thousand dollars or both.

§48-2A-8. Testimony of husband and wife.

1 Husband and wife are competent witnesses in such pro-
 2 ceedings and cannot refuse to testify on the grounds of the
 3 privileged nature of their communications.

CHAPTER 35

(H. B. 873—By Mr. Dalton and Mr. Mathis)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the superintendent and the county board of education to have an office within five miles of the county seat.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**§18-4-7. Office.**

1 The board shall provide a suitable office, within five miles

- 2 of the county seat, for use by the superintendent and the
- 3 members of the board. The board shall supply the office with
- 4 janitor service and with the necessary equipment and supplies.

CHAPTER 36

(Com. Sub. for H. B. 859—By Mr. Harden)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring a public hearing to be held on the preliminary operating budget of a county board of education, and requiring notice of the hearing to be published.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; quorum; employment and assignment of teachers; public hearing concerning preliminary operating budget; publication of notice thereof; compensation of members; affiliation with state and national associations; dues and traveling expenses.

- 1 The board shall meet on the first Monday of January,
- 2 except that in the year one thousand nine hundred eighty-two,
- 3 and every year thereafter, the board shall meet on the first
- 4 Monday of July, and upon the dates provided by law for the
- 5 laying of levies, and at such other times as the board may
- 6 fix upon its records. At any meeting as authorized above and in
- 7 compliance with the provisions of article four of this chapter,
- 8 the board may employ such qualified teachers, or those who
- 9 will qualify by the time of entering upon their duties, neces-
- 10 sary to fill existing or anticipated vacancies for the current

11 or next ensuing school year. At a meeting of the board, on or
12 before the first Monday of May, the superintendent shall
13 furnish in writing to the board a list of those teachers to be
14 considered for transfer and subsequent assignment for the
15 next ensuing school year; all other teachers not so listed shall be
16 considered as reassigned to the positions held at the time of
17 this meeting. Such list of those recommended for transfer
18 shall be included in the minute record and the teachers so
19 listed shall be notified in writing, which notice shall be de-
20 livered in writing, by certified mail, return receipt requested,
21 to such teachers' last-known addresses within ten days fol-
22 lowing said board meeting, of their having been so recom-
23 mended for transfer and subsequent assignment.

24 Special meetings may be called by the president or any
25 three members, but no business shall be transacted other than
26 that designated in the call.

27 In addition, a public hearing shall be held concerning the
28 preliminary operating budget for the next fiscal year not
29 less than ten days after such budget has been made available to
30 the public for inspection and within a reasonable time prior
31 to the submission of said budget to the West Virginia board of
32 education for approval and at such hearing reasonable time
33 shall be granted to any person or persons who wish to speak
34 regarding parts or all of such budget. Notice of such hearing
35 shall be published as a Class I legal advertisement in compli-
36 ance with the provisions of article three, chapter fifty-nine of
37 this code.

38 A majority of the members shall constitute the quorum
39 necessary for the transaction of official business.

40 Board members may receive compensation at a rate not to
41 exceed forty dollars per meeting attended. But they shall not
42 receive pay for more than thirty-six meetings in any one fiscal
43 year.

44 Members shall also be paid, upon the presentation of an
45 itemized sworn statement, for all necessary traveling expenses,
46 including all authorized meetings, incurred on official business,
47 at the order of the board.

48 When, by a majority vote of its members, a county board
49 of education deems it a matter of public interest, such board
50 may join the West Virginia school board association and
51 the national school board association, and may pay such dues
52 as may be prescribed by said associations and approved by
53 action of the respective county boards. Membership dues and
54 actual traveling expenses of board members for attending
55 meetings of the West Virginia school board association may
56 be paid by their respective county boards of education out of
57 funds available to meet actual expenses of the members,
58 but no allowance shall be made except upon sworn itemized
59 statements.

CHAPTER 37

(Com. Sub. for S. B. 424—By Mr. Nelson)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a, article four, chapter eighteen-a of said code, all relating to county boards of education and school personnel; providing for county boards of education to set school term opening and closing dates; providing that noninstructional days shall be rescheduled as instructional days in certain instances; and providing increases in the state supplemental salary schedule for teachers.

Be it enacted by the Legislature of West Virginia:

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

Chapter**18. Education.****18A. School Personnel.****CHAPTER 18. EDUCATION.****ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-15. School term; employment term; instructional term; extension of terms; levies; ages of persons to whom schools are open.**

1 The board shall provide a school term for its schools
2 which shall be comprised of (a) an employment term for
3 teachers, and (b) an instructional term for pupils.

4 The employment term for teachers shall be no less than
5 ten months, a month to be defined as twenty employment
6 days exclusive of Saturdays and Sundays: *Provided*, That
7 the board may contract with all or part of the personnel
8 for a longer term. The employment term shall be fixed
9 within such beginning and closing dates as established
10 by the state board: *Provided, however*, That the time
11 between the beginning and closing dates does not exceed
12 forty-three weeks.

13 Within the employment term there shall be an in-
14 structional term for pupils of not less than one hundred
15 eighty nor more than one hundred eighty-five instruc-
16 tional days. Instructional and noninstructional activities
17 may be scheduled during the same employment day. The
18 instructional term shall commence no earlier than the
19 first Tuesday following Labor Day and shall terminate
20 no later than the eighth day of June and shall not cover
21 a period greater than two hundred seventy-eight calendar
22 days.

23 Noninstructional days in the employment term may be
24 used for curriculum development, preparation for open-
25 ing and closing of the instructional term, in-service and
26 professional training of teachers, teacher-pupil-parent
27 conferences, professional meetings and other related ac-
28 tivities. However, no more than four such noninstruc-
29 tional days, except holidays, may be scheduled prior to
30 the first day of January in a school term.

31 Notwithstanding any other provisions of the law to the

32 contrary, if the board has canceled instructional days
33 equal to the difference between the total instructional
34 days scheduled and one hundred eighty, each succeeding
35 instructional day canceled shall be rescheduled, utilizing
36 only the remaining noninstructional days, except holi-
37 days, following such cancellation, which are available
38 prior to the second day before the end of the employ-
39 ment term established by such county board.

40 Where the employment term overlaps a teacher's par-
41 ticipation in a summer institute or institution of higher
42 learning for the purpose of professional growth, the
43 teacher may substitute, with the approval of the county
44 superintendent, such participation for not more than four
45 of the noninstructional days of the employment term.

46 The board may extend the instructional term beyond
47 one hundred eighty-five instructional days provided the
48 employment term is extended an equal number of days.
49 If the state revenues and regular levies, as provided by
50 law, are insufficient to enable the board of education to
51 provide for the school term, the board may at any general
52 or special election, if petitioned by at least five percent
53 of the qualified voters in the district, submit the question
54 of additional levies to the voters. If at the election sixty
55 percent of the qualified voters cast their ballots in favor
56 of the additional levy, the board shall fix the term and
57 lay a levy necessary to pay the cost of the additional
58 term. The additional levy fixed by the election shall not
59 continue longer than five years without submission to the
60 voters. The additional rate shall not exceed by more
61 than one hundred percent the maximum school rate pre-
62 scribed by article eight, chapter eleven of the code, as
63 amended.

64 The public schools shall be open for the full instruc-
65 tional term to all persons who have attained the entrance
66 age as stated in section five, article two and section
67 eighteen, article five, chapter eighteen of this code: *Pro-*
68 *vided*, That persons over the age of twenty-one may enter
69 only those programs or classes authorized by the state
70 board of education and deemed appropriate by the county
71 board of education conducting any such program or class:
72 *Provided, however*, That authorization for such programs

73 or classes shall in no way serve to affect or eliminate
 74 programs or classes offered by county boards of education
 75 at the adult level for which fees are charged to support
 76 such programs or classes.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2a. State supplemental salaries.

1 In addition to the amount of state minimum salary
 2 received pursuant to section two of this article, on and
 3 after the first day of July, one thousand nine hundred
 4 seventy-nine, each teacher shall receive as a supplement
 5 thereto the specific additional amount prescribed in this
 6 section for such teacher's years of experience and educa-
 7 tional level as hereinafter set forth. This salary supple-
 8 ment and the increased fixed charges payments hereby
 9 required shall be paid outside the West Virginia public
 10 school support plan provided for in article nine-a, chapter
 11 eighteen of the code.

STATE SUPPLEMENTAL SALARY SCHEDULE

Educational Level									
(1) Years Exp.	(2) 4th Class	(3) 3rd Class	(4) 2nd Class	(5) AB	(6) AB +15	(7) MA	(8) MA +15	(9) MA +30	(10) Doc- torate
0	1350	1350	1350	1350	1560	1770	1980	2190	2400
1	1350	1350	1350	1466	1676	1886	2096	2306	2516
2	1350	1350	1350	1582	1792	2002	2212	2422	2632
3	1350	1350	1350	1698	1908	2118	2328	2538	2748
4	1350	1350	1350	1814	2024	2234	2444	2654	2864
5	1350	1350	1350	1930	2140	2350	2560	2770	2980
6	1350	1350	1350	2046	2256	2466	2676	2886	3096
7		1350	1350	2162	2372	2582	2792	3002	3212
8		1350	1350	2278	2488	2698	2908	3118	3328
9			1350	2394	2604	2814	3024	3234	3444
10			1350	2510	2720	2930	3140	3350	3560
11				2626	2836	3046	3256	3466	3676
12				2742	2952	3162	3372	3582	3792
13				2858	3068	3278	3488	3698	3908
14						3394	3604	3814	4024
15						3510	3720	3930	4140
16						3626	3836	4046	4256
17								4162	4372
18								4278	4488
19								4394	4604

CHAPTER 38

(H. B. 1200—By Mr. Blackwell)

[Passed March 10, 1979; 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 eighteen-a, relating to limiting the number of pupils assigned to any one teacher in a primary grade or a kindergarten session.

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 eighteen-a, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18a. Maximum teacher-pupil ratio to be established by school year 1983-1984.

1 County boards of education shall provide, by the school
2 year one thousand nine hundred eighty-three—eighty-four, and
3 continue thereafter, sufficient personnel, equipment and
4 facilities as will ensure that each first, second and third
5 grade classroom or classrooms for two or more grades, in-
6 cluding one or more of the first, second and third grades,
7 shall not have more than twenty-five pupils for each teacher
8 of the grade or grades; further, county boards of education
9 shall also provide by the school year one thousand nine
10 hundred eighty-three—eighty-four, and thereafter sufficient per-
11 sonnel, equipment and facilities as will ensure that there
12 will not be more than twenty pupils in each kindergarten
13 session in any given school situation: *Provided*, That upon
14 application of a county board of education to the state superin-
15 tendent, and approval thereof by the state superintendent, as
16 to each specific classroom for which the application is made, a
17 county board may maintain the classroom, equipment and
18 teacher for more than twenty-five pupils in primary grades,

19 or for more than twenty pupils in kindergarten, subject to the
20 approval of the state superintendent as may from time to time
21 be granted, in the school year one thousand nine hundred
22 eighty-three—eighty-four. Thereafter, all first, second and third
23 grade classes and any combined classes containing one or
24 more of the same shall have no more than twenty-five pupils
25 assigned to any one teacher; and all kindergarten sessions shall
26 have no more than twenty pupils assigned to any one teacher.

CHAPTER 39

(Com. Sub. for H. B. 863—By Mr. Speaker, Mr. See)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the board of regents to enter into reciprocal agreements with other states providing financial assistance to their residents attending institutions of higher learning in West Virginia.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-two-b, 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 22B. STATE SCHOLARSHIP PROGRAM.

§18-22B-6. Recipients, awards and distribution of awards of scholarships; authority of board of regents to enter into reciprocal agreements with other states concerning scholarships.

1 The scholarship recipient shall be free to attend any ap-
2 proved institution of higher education in this state. The insti-
3 tution is not required to accept the scholarship recipient for
4 enrollment, but is free to exact compliance with its own ad-
5 mission requirements, standards and policies.

6 Scholarship grants shall be made to undergraduate students
7 only.

8 Each scholarship is renewable until the course of study is
9 completed, but not to exceed an additional three academic
10 years beyond the first year of the award. These may not
11 necessarily be consecutive years and the scholarship will be
12 terminated if the student receives his degree in a shorter period
13 of time. Qualifications for renewal will include maintaining
14 satisfactory academic standing, making normal progress to-
15 ward completion of the course of study and continued eligi-
16 bility, as determined by the commission.

17 Scholarship awards shall be made without regard to the
18 applicant's race, creed, color, sex, national origin or ancestry;
19 and in making scholarship awards, the commission shall treat
20 all approved institutions of higher education in a fair and
21 equitable manner. The commission from time to time shall
22 identify areas of professional, vocational and technical exper-
23 tise that are, or will be, of critical need in this state and, to
24 the extent feasible, may direct scholarship grants to students
25 that are pursuing instruction in those areas.

26 The board of regents may enter into reciprocal agreements
27 with state scholarship and grant program agencies in other
28 states which provide financial assistance to their residents at-
29 tending institutions of higher education located in West Vir-
30 ginia. In connection therewith, the board of regents may
31 authorize residents of West Virginia to use financial assistance
32 under this article to attend institutions of higher education in
33 such other states. Residents of West Virginia requesting fi-
34 nancial assistance to attend institutions of higher education
35 located in any such states must meet all of the eligibility stan-
36 dards set forth in section five of this article.

37 Scholarship awards shall be limited to the lesser of the pay-
38 ment of tuition and those related compulsory fees charged by
39 an institution to all West Virginia undergraduate students, or
40 an amount equal to the average state general fund support for
41 each full-time equivalent student in the state four-year colleges
42 for the preceding academic year as calculated by the board of
43 regents.

44 Payments of scholarships shall be made directly to the
45 institution.

46 In the event that a scholarship recipient transfers from one
47 approved institution of higher education to another, his scholar-
48 ship shall be transferable only with the approval of the com-
49 mission.

50 Should the recipient terminate his enrollment for any reason
51 during the academic year, the unused portion of the scholar-
52 ship shall be returned to the commission by the institution ac-
53 cording to the institution's own policy for issuing refunds.

CHAPTER 40

(H. B. 1541—By Mrs. Wehrle)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting college or university security officers authority to preserve law and order and assist local peace officers in traffic control on certain streets and roads adjacent to or passing through premises under the jurisdiction of the board of regents.

Be it enacted by the Legislature of West Virginia:

That section eight-a, 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.

§18-26-8a. Security officers; appointment; qualifications; authority; compensation and removal.

1 The West Virginia board of regents is hereby authorized
2 to appoint bona fide residents of this state to act as
3 security officers upon any premises owned or leased by the
4 state of West Virginia and under the jurisdiction of the

5 board of regents, subject to the conditions and restrictions
6 hereinafter imposed. Before entering upon the performance
7 of his duties as such security officer in any county, each
8 person so appointed shall qualify therefor in the same man-
9 ner as is required of county officers by the taking and
10 filing an oath of office as required by article one, chapter
11 six of this code and by posting an official bond as required
12 by article two, chapter six of this code. No such person
13 shall have authority to carry a gun or any other dangerous
14 weapon until he shall have obtained a license therefor in the
15 manner prescribed by section two, article seven, chapter
16 sixty-one of this code.

17 It shall be the duty of any person so appointed and
18 qualified, to preserve law and order on any premises under
19 the jurisdiction of the board of regents and on any other
20 street, road or thoroughfare, except controlled access and
21 open country highways, adjacent to or passing through such
22 premises, to which he may be assigned by the president of
23 the college or university. For this purpose he shall as to
24 offenses committed within any area so assigned have and
25 may exercise all the powers and authority and shall be subject
26 to all the responsibilities of a deputy sheriff of the county.
27 The assignment of security officers to the duties authorized
28 by this section shall not be deemed to supersede in any way
29 the authority or duty of other peace officers to preserve law
30 and order on such premises. In addition, the security officers
31 appointed under provisions of this section shall have authority
32 to assist local peace officers on public highways in the control
33 of traffic in and around premises owned by the state of West
34 Virginia whenever such traffic is generated as a result of
35 athletic or other activities conducted or sponsored by a state
36 college or university and when such assistance has been re-
37 quested by the local peace officers.

38 The salary of all such security officers shall be paid by the
39 board of regents. Each institution may furnish each such secur-
40 ity officer with an official uniform to be worn while on duty and
41 shall furnish and require each such officer while on duty to
42 wear a shield with an appropriate inscription and to carry cre-
43 dentials certifying to his identity and to his authority as a
44 security officer.

45 The board of regents may at its pleasure revoke the authority
46 of any such officer and the president of the college or univer-
47 sity shall report the termination of employment of any such
48 security officer by filing a notice to that effect in the office of
49 the clerk of each county in which his oath of office was filed,
50 and in the case of officers licensed to carry a gun or other
51 dangerous weapon by notifying the clerk of the circuit court
52 of the county in which the license therefor was granted.

CHAPTER 41

(H. B. 817—By Mr. Prunty and Mr. Greer)

[Passed February 14, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-c, relating to the retention or nonretention of probationary faculty members by the board of regents; providing for notice of nonretention with the reasons therefor to be furnished upon request; and requiring a hearing when requested.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-8c. Notice to probationary faculty members of retention or nonretention; hearing.

1 The president of each state college, university or community
2 college shall give written notice to probationary faculty mem-
3 bers concerning their retention or nonretention for the en-
4 suing academic year, not later than the first day of March for

5 those probationary faculty members who are in their first
6 academic year of service; not later than the fifteenth day
7 of December for those probationary faculty members who
8 are in their second academic year of service; and at least
9 one year before the expiration of an appointment for those
10 probationary faculty members who have been employed two
11 or more years with the institution. Such notice to those
12 probationary faculty members who will not be retained shall
13 be by certified mail, return receipt requested. Upon request
14 of the probationary faculty member not retained, the president
15 of the state college, university or community college shall
16 within ten days, and by certified mail, inform the probationary
17 faculty member of the reasons for nonretention. Any pro-
18 bationary faculty member who desires to appeal the decision
19 may request a hearing from the board of regents within ten
20 days after receiving the statement of reasons. The board of
21 regents shall publish appropriate rules to govern the conduct
22 of the appeal herein allowed. The board of regents shall, by
23 such rules, prescribe either an unbiased committee of the board
24 or appoint a hearing examiner to hear such appeals. Such
25 hearing shall be held at the employing institution and within
26 thirty days of the request. The rules of evidence shall not
27 strictly apply. The faculty member shall be accorded sub-
28 stantive and procedural due process, including the right to
29 produce evidence and witnesses and to cross-examine wit-
30 nesses, and to be represented by counsel or other representa-
31 tive of his or her choice. If the committee of the board or
32 the hearing examiner shall conclude that the reasons for
33 nonretention are arbitrary or capricious or without a factual
34 basis, the faculty member shall be retained for the ensuing
35 academic year. The decision shall be rendered within thirty
36 days after conclusion of the hearing. The term "probationary
37 faculty members," shall be defined according to regulations
38 promulgated by the board of regents.

39 The rights herein provided to probationary faculty members
40 are in addition to, and not in lieu of, other rights afforded
41 them by other rules and regulations of the board of regents.

CHAPTER 42

(Com. Sub. for H. B. 1363—By Mr. Kidd and Mr. Moler)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary increments paid to school principals for supervision of teachers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-3. Salary increments for principals.

1 In addition to the present recommended salary schedules in
2 each county for principals, the following schedule of monthly
3 salary increments for principals shall be paid from state funds
4 appropriated therefor, beginning with the fiscal year commenc-
5 ing on the first day of July, one thousand nine hundred seventy-
6 nine:

	No. of Teachers	Bachelor's Degree or Lesser Certification	Master's Degree	Principal's Certificate
7	2	\$ 6.00	\$ 6.25	\$10.75
8	3	7.75	8.25	12.75
9	4	9.50	10.75	15.00
10	5	11.75	13.25	17.75
11	6	14.25	15.75	20.25
12	7	16.00	18.00	22.50
13	8	18.00	20.25	24.50
14	9	19.75	22.50	27.00
15	10	22.00	24.50	29.25
16	11	23.50	27.00	31.50
17	12	25.25	29.25	33.75

18	13	26.75	31.50	35.75
19	14	28.50	33.75	38.25
20	15	30.00	35.75	40.50
21	16	30.50	36.75	41.25
22	17	31.00	37.25	41.75
23	18	31.75	38.00	42.25
24	19	32.25	38.50	43.00
25	20 or more	33.25	39.00	43.50

CHAPTER 43

(Com. Sub. for S. B. 453—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum monthly pay scale for school auxiliary and service personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE

YEARS OF EMPLOY- MENT	PAY GRADE							
	A	B	C	D	E	F	G	H
0	538	558	598	648	698	758	788	858
1	551	571	611	661	711	771	801	871
2	564	584	624	674	724	784	814	884

3	577	597	637	687	737	797	827	897
4	590	610	650	700	750	810	840	910
5	603	623	663	713	763	823	853	923
6	616	636	676	726	776	836	866	936
7	629	649	689	739	789	849	879	949
8	642	662	702	752	802	862	892	962
9	655	675	715	765	815	875	905	975
10	668	688	728	778	828	888	918	988
11	681	701	741	791	841	901	931	1001
12	694	714	754	804	854	914	944	1014
13	707	727	767	817	867	927	957	1027

CLASS TITLE**PAY GRADE**

Accountant I	D
Accountant II	E
Accountant III	F
Aide I	A
Aide II	B
Aide III	C
Audiovisual Technician	C
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager	D
Carpenter I	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B
Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Electrician I	F

Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	F
Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Locksmith	G
Lubrication Man	C
Machinist	F
Maintenance Clerk	C
Mason	G
Mechanic	F
Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Supervisor of Maintenance	H
Supervisor of Transportation	H
Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C

Watchman B
 Welder F

1 On and after the first day of July, one thousand nine
 2 hundred seventy-nine, the minimum monthly pay for
 3 each auxiliary and service employee whose employment
 4 is for a period of more than three and one-half hours a
 5 day shall be at least the amounts indicated in the "state
 6 minimum pay scale" as set forth in this section, and the
 7 minimum monthly pay for each auxiliary and service
 8 employee whose employment is for a period of three
 9 and one-half hours or less a day shall be at least one half
 10 the amount indicated in the "state minimum pay scale"
 11 set forth in this section.

CHAPTER 44

(S. B. 6—By Mr. Gainer)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to personal leave for teachers and other employees of county boards of education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-10. Personal leave for illness and other causes.

1 At the beginning of his employment term, any full-
 2 time employee of a county board of education shall be
 3 entitled annually to at least one and one-half days per-
 4 sonal leave for each employment month or major fraction

5 thereof in the employee's employment term. Unused
6 leave shall be accumulative without limitation and shall
7 be transferable within the state. A change in job assign-
8 ment during the school year shall in no way affect the
9 employee's rights or benefits.

10 A regular full-time employee who is absent from
11 assigned duties due to accident, sickness, death in the
12 immediate family, or other cause authorized or approved
13 by the board, shall be paid his full salary from his regular
14 budgeted salary appropriation during the period which
15 he is absent, but not to exceed the total amount of leave
16 to which he is entitled: *Provided*, That each such em-
17 ployee shall be permitted three days of such leave annu-
18 ally, which may be taken without regard to the cause for
19 the absence, except that personal leave without cause
20 may not be taken on consecutive work days unless autho-
21 rized or approved by the employee's principal or im-
22 mediate supervisor, as the case may be: *Provided*,
23 *however*, That notice of such leave day shall be given
24 to the employee's principal or immediate supervisor, as
25 the case may be, at least twenty-four hours in advance,
26 except that in the case of sudden and unexpected circum-
27 stances, such notice shall be given as soon as reasonably
28 practicable; however, the use of such day may be denied
29 if, at the time notice is given, either fifteen percent of
30 the employees or three employees, whichever is greater,
31 under the supervision of the principal or immediate super-
32 visor, as the case may be, have previously notified the
33 principal or immediate supervisor of their intention to
34 use that day for such leave: *Provided further*, That such
35 leave shall not be used in connection with a concerted
36 work stoppage or strike. Where the cause for leave had
37 its origin prior to the beginning of the employment term,
38 the employee shall be paid for time lost after the start
39 of the employment term. If an employee should use per-
40 sonal leave which he has not yet accumulated on a
41 monthly basis and subsequently leave his employment,
42 he shall be required to reimburse the board for the salary
43 or wages paid to him for such unaccumulated leave.

44 The board may establish reasonable regulations for

45 reporting and verification of absence for causes; and if
46 any error in reporting absences should occur it shall have
47 authority to make necessary salary adjustments in the
48 next pay after the employee has returned to duty or in
49 the final pay if the absence should occur during the last
50 month of his employment term. When such allowable
51 absence does not directly affect the instruction of the
52 pupils or when a substitute employee may not be required
53 because of the nature of the work and the duration of the
54 cause for the allowable absence of the regular employee,
55 the administration, subject to board approval, may use its
56 discretion as to the need for a substitute where limited
57 absence may prevail. Any board of education shall have
58 authority to supplement such leave provisions in any
59 manner it may deem advisable.

60 If funds in any fiscal year, including transfers, are
61 insufficient to pay the full cost of substitutes for meeting
62 the provisions of this section, the remainder shall be paid
63 on or before the thirty-first day of August from the bud-
64 get of the next fiscal year.

CHAPTER 45

(Com. Sub. for H. B. 929—By Mr. Albright)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a; and to amend article two, chapter sixty-one of said code by adding thereto a new section, designated section fifteen, relating to assaults by pupils upon teachers or other school personnel; temporary suspension and hearing; procedures, including notice and a formal hearing for longer suspension or expulsion; special consideration given to exceptional children; unlawful assault on a school employee and the penalty

therefor; unlawful battery on a school employee and the penalty therefor; and definition of school employee.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen-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 one-a; and that article two, chapter sixty-one of said code, be amended by adding thereto a new section, designated section fifteen, all to read as follows:

Chapter

18A. School Personnel.

61. Crimes and Their Punishment.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Assaults by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; expulsion; exception.

1 (a) Any pupil who threatens to cause, attempts to cause,
2 or causes a bodily injury to a school employee may be
3 suspended or expelled from school in accordance with the
4 provisions of this section.

5 (b) The actions of any pupil which may be grounds for his
6 suspension or expulsion under the provisions of this section
7 shall be reported immediately to the principal of the school
8 in which such pupil is enrolled. If the principal determines
9 that the alleged actions of the pupil would be grounds for
10 suspension, he shall conduct an informal hearing for the pupil
11 as soon as practicable after the alleged actions have occurred.
12 The hearing shall be held before the pupil is suspended unless
13 the principal believes that the continued presence of the pupil
14 in the school poses a continuing danger to persons or property
15 or an ongoing threat of disrupting the academic process, in
16 which case the pupil may be suspended immediately and a
17 hearing held as soon as practicable after the suspension.

18 The pupil and his parent or parents or custodial guardian,
19 as the case may be, shall be given written notice by certified
20 mail, return receipt requested, of this informal hearing,
21 which notice shall briefly state the grounds for suspen-
22 sion.

23 At the commencement of the informal hearing, the prin-
24 cipal shall inquire of the pupil as to whether he admits
25 or denies the charges. If the pupil does not admit the
26 charges, he shall be given an explanation of the evidence
27 possessed by the principal and an opportunity to present
28 his version of the occurrence. At the conclusion of the
29 hearing or upon the failure of the noticed persons to ap-
30 pear, the principal may suspend the pupil for a maximum
31 of ten calendar days, including the time prior to such
32 hearing, if any, for which the pupil has been excluded from
33 school. If the principal believes a longer suspension or
34 expulsion of the pupil is warranted in addition to a ten-
35 day suspension, he shall so advise the parents and pupil,
36 if present, and recommend such action to the superintendent
37 of schools of the county in which the school where the pupil
38 is enrolled is located.

39 (c) Any suspension shall be reported by the prin-
40 cipal the same day it has been decided upon, in writ-
41 ing, to the county superintendent of schools of the county
42 in which the school where the pupil is enrolled is lo-
43 cated.

44 (d) If the principal recommends and the superin-
45 tendent agrees that the suspension should be extended
46 for beyond ten calendar days or that the pupil should
47 be expelled from school, the superintendent shall im-
48 mediately notify the county board of education of this
49 recommendation. Upon receipt of such recommendation,
50 the county board of education shall cause a written
51 notice, which states the charges and the recommended
52 disposition, to be served upon the pupil and his parent
53 or parents or custodial guardian, as the case may be,
54 advising such persons that unless a timely request is made
55 for hearing, the recommended disposition shall become
56 final. Such notice shall set forth a date and time at

57 which such hearing, if requested, shall be held, which date
58 shall be within the ten-day period of suspension imposed
59 by the principal. The notice shall further advise the per-
60 sons to be noticed thereby that a request for hearing will
61 not be granted unless received by the board more than
62 twenty-four hours before the time proposed for hearing in the
63 notice.

64 Upon timely receipt of a hearing request, the board of
65 education shall hold the scheduled hearing to determine if
66 the pupil should be reinstated or should have his suspension
67 extended or should be expelled from school. At this hearing,
68 the pupil may be represented by counsel, may call his own
69 witnesses to verify his version of the incident and may confront
70 and cross-examine witnesses supporting the charge against him.
71 The hearing may be postponed for good cause shown by the
72 pupil but he shall remain under suspension until after the
73 hearing. The state board of education may adopt other
74 supplementary rules of procedure to be followed in these
75 hearings. At the conclusion of the hearing the county board
76 of education either shall order the pupil reinstated immedi-
77 ately or at the end of his initial suspension or shall suspend
78 the pupil for a further designated number of days or shall
79 expel the pupil from the public schools of such county for a
80 period of time not to exceed one school year.

81 (e) Notwithstanding the preceding provisions of this sec-
82 tion, if a pupil has prior to the actions complained of been
83 classified as or is eligible to be classified as an excep-
84 tional child, other than gifted, under the provisions of
85 section one, article twenty, chapter eighteen of this code,
86 special consideration shall be given to such pupil as here-
87 inafter provided.

88 In any hearing held pursuant to this section, a pupil, his
89 parent or custodial guardian may show in explanation of the
90 actions complained of that such actions were the proximate
91 result of a condition which has qualified or would qualify
92 the pupil for a special educational program other than gifted.
93 If the principal or board finds that such actions were the
94 proximate result of such a condition, the pupil shall not be
95 suspended or expelled pursuant to this section but the pupil

96 shall be forthwith referred to the appropriate personnel within
97 the county school system for development of an individual
98 learning program: *Provided*, That such pupil may be tem-
99 porarily removed from school according to procedures em-
100 ployed by the school system for special education pupils if,
101 in the opinion of the principal, such removal is necessary for
102 his or her own protection or the protection of other pupils,
103 teachers, school personnel or school property during all or
104 some part of the time required to prepare such individual
105 learning program.

106 (f) In all hearings under this section, facts shall be found
107 by a preponderance of the evidence.

108 (g) For the purpose of this section, "school employee"
109 means a person employed by a county board of education
110 whether employed on a regular full-time basis, an hourly
111 basis or otherwise if, at the time of the commission of an
112 act which would be grounds for suspension or expulsion
113 under this section, such person is engaged in the performance
114 of his duties or is commuting to or from his place of employ-
115 ment. For the purposes of this section, a "school employee"
116 shall be deemed to include a student teacher.

117 (h) The remedies provided for in this section are cumula-
118 tive.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15. Assault, battery on school employees; penalties.

1 (a) If any person commits an assault by unlawfully attempt-
2 ing to commit a violent injury to the person of a school
3 employee or by unlawfully committing an act which places a
4 school employee in reasonable apprehension of immediately
5 receiving a violent injury, he shall be guilty of a misdemeanor,
6 and, upon conviction, shall be confined in jail not less than
7 five days nor more than six months and fined not less than
8 fifty dollars nor more than one hundred dollars.

9 (b) If any person commits a battery by unlawfully and

10 intentionally making physical contact of an insulting or pro-
11 voking nature with the person of a school employee or by
12 unlawfully and intentionally causing physical harm to a school
13 employee, he shall be guilty of a misdemeanor, and, upon
14 conviction, shall be confined in jail not less than ten days
15 nor more than twelve months and fined not less than one
16 hundred dollars nor more than five hundred dollars.

17 (c) For the purposes of this section, "school employee"
18 means a person employed by a county board of education
19 whether employed on a regular full-time basis, an hourly
20 basis or otherwise if, at the time of the commission of any
21 offense provided for in this section, such person is engaged
22 in the performance of his duties or is commuting to or from
23 his place of employment. For the purposes of this section,
24 a "school employee" shall be deemed to include a student
25 teacher.

CHAPTER 46

(S. B. 3—By Mr. Steptoe)

[Passed January 23, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections; persons entitled to vote; and providing that paupers are entitled to vote.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-3. Persons entitled to vote.

1 Citizens of the state shall be entitled to vote at all
2 elections held within the precincts of the counties and

3 municipalities in which they respectively reside. But no
4 person who has not been registered as a voter as required
5 by law, or who is a minor, or of unsound mind, or who
6 is under conviction of treason, felony or bribery in an
7 election, or who is not a bona fide resident of the state,
8 county or municipality in which he offers to vote, shall be
9 permitted to vote at such election while such disability
10 continues. Subject to the qualifications otherwise pre-
11 scribed in this section, however, a minor shall be per-
12 mitted to vote in a primary election if he will have
13 reached the age of eighteen years on the date of the
14 general election next to be held after such primary
15 election.

CHAPTER 47

(Com. Sub. for S. B. 102—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight, relating to the practice of electrology or electrolysis; defining terms; and requiring the West Virginia board of health to promulgate rules and regulations providing for the safe practice of electrology or electrolysis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. ELECTROLOGISTS.

§16-8-1. Definitions.

§16-8-2. Regulations by state board of health; minimum requirements.

§16-8-1. Definitions.

- 1 (a) "Electrology" means the art and practice relating
- 2 to the removing of hair from the normal skin of the body

3 by the application of an electric current to the hair pa-
4 pilla by means of a needle or needles, or by the applica-
5 tion of an electronic tweezer having the electrical current
6 flow through the hair and the follicle as in conventional
7 electrolysis.

8 (b) "Electrolysis" means the process by which hair is
9 removed from the normal skin by the application of an
10 electric current to the hair root by means of a needle,
11 needles or electronic tweezer, whether the process em-
12 ploys direct electric current to the hair root or by means
13 of shortwave alternating electric current.

**§16-8-2. Regulations by state board of health; minimum require-
ments.**

1 The West Virginia board of health shall adopt rules and
2 regulations, as in their judgment are necessary, to pro-
3 vide for the safe practice of electrology or electrolysis
4 in this state, and when promulgated, these rules and regu-
5 lations shall be the minimum requirements to be enforced
6 by local health authorities throughout the state. All rules
7 and regulations shall be promulgated in the manner pro-
8 vided by the provisions of article three, chapter twenty-
9 nine-a of this code.

CHAPTER 48

(H. B. 1119—By Mr. Starcher)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article nineteen, chap-
ter sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the uniform anatom-
ical gift act; the manner of completing and executing such gifts;
permitting licensed embalmers and funeral directors to enucleate
an eye or eyes in certain cases; immunity from civil or criminal
liability.

Be it enacted by the Legislature of West Virginia:

That section four, article nineteen, 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 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-4. Manner of executing anatomical gifts.

1 (a) A gift of all or part of the body under subsection (a),
2 section two of this article may be made by will. The gift
3 becomes effective upon certification of death of the testator
4 without waiting for probate. If the will is not probated, or
5 if it is declared invalid for testamentary purposes, the gift,
6 to the extent that it has been acted upon in good faith, is
7 nevertheless valid and effective.

8 (b) A gift of all or part of the body under subsection (a),
9 section two of this article may also be made by document
10 other than a will. The gift becomes effective upon certifica-
11 tion of death of the donor. The document, which may be
12 a card designed to be carried on the person, must be
13 signed by the donor in the presence of two witnesses who
14 must sign the document in his presence. If the donor cannot
15 sign, the document may be signed for him at his direction
16 and in his presence in the presence of two witnesses who
17 must sign the document in his presence. Delivery of the
18 document of gift during the donor's lifetime is not necessary
19 to make the gift valid.

20 (c) The gift may be made to a specified donee or without
21 specifying a donee. If the latter, the West Virginia anatomical
22 board will be considered to be the donee unless it declines to
23 accept the gift, or unless there is urgent immediate need
24 for a part of the body for transplant or other purposes in
25 which case the gift may be accepted by the attending physician
26 as donee upon or following certification of death. In
27 case the anatomical board is considered the donee it shall
28 be the duty of the person who has charge or control of the
29 body, if he or she has knowledge of the gift, to give notice
30 thereof to the anatomical board within twenty-four hours
31 after such body comes under his or her control. Thereafter,

32 he or she shall hold the body subject to the order of the
33 anatomical board for at least twenty-four hours after the
34 sending of such notice. If the anatomical board makes a
35 requisition for the body within the twenty-four-hour period,
36 it shall be delivered, pursuant to the order of the board, to
37 the board or its authorized agent for transportation to West
38 Virginia University or any other educational institution which
39 the board deems to be in bona fide need thereof and able to
40 adequately control, use and dispose of the body. If the
41 anatomical board shall not so act within the twenty-four-hour
42 period, the gift may be accepted by the attending physician
43 as donee upon or following certification of death. If the
44 gift is made to a specified donee who is not available at the
45 time and place of death, the attending physician upon or
46 following certification of death, in the absence of any ex-
47 pressed indication that the donor desired otherwise, may
48 accept the gift as donee. The physician who becomes a
49 donee under this subsection shall not participate in the
50 procedures for removing or transplanting a part, except that
51 this prohibition shall not apply to the removing or trans-
52 planting of an eye or eyes.

53 (d) Notwithstanding subsection (b), section seven of this
54 article, the donor may designate in his will, card or other
55 document of gift, the surgeon or physician to carry out the
56 appropriate procedures, or in the case of a gift of an eye or
57 eyes, the surgeon or physician or the technician properly
58 trained in the surgical removal of eyes to carry out the
59 appropriate procedures. In the event of the nonavailability
60 of such designee, or in the absence of a designation, the
61 donee or other person authorized to accept the gift may
62 employ or authorize for the purpose any surgeon or physician
63 or in the case of a gift of an eye or eyes, any surgeon or
64 physician or technician properly trained in the surgical removal
65 of eyes or also in case of a gift of an eye or eyes, the donee
66 or other person authorized to accept the gift may employ or
67 authorize a licensed funeral director or embalmer licensed
68 pursuant to article six, chapter thirty of this code who has
69 successfully completed a course in enucleation approved by
70 the medical licensing board of West Virginia to enucleate
71 the eye or eyes for the gift after certification of death by a

72 physician. The qualified funeral director or embalmer shall
 73 properly care for the enucleated eye or eyes and promptly
 74 deliver the eye or eyes to the donee or other person authorized
 75 to accept the gift. A qualified funeral director or embalmer act-
 76 ing in accordance with the terms of this subsection shall not be
 77 liable, civilly or criminally for the eye enucleation.

78 (e) Any gift by a person designated in subsection (b),
 79 section two of this article shall be made by a document
 80 signed by him or made by his telegraphic, recorded tele-
 81 phonic or other recorded message.

82 (f) No particular words shall be necessary for donation of
 83 all or part of a body, but the following words, in substance,
 84 properly signed and witnessed, shall be legally valid for
 85 donations made pursuant to subsection (b) of this section:

86 "UNIFORM DONOR CARD

87 of

88 -----
 89 Print or type name of donor

90 In the hope that I may help others, I hereby make this
 91 anatomical gift, if medically acceptable, to take effect upon
 92 certification of my death. The words and marks below indi-
 93 cate my desires.

94 I give: (a). . . . any needed organs or parts;
 95 (b). . . . only the following organs or parts

96 -----
 97 Specify the organ(s) or part(s)

98 for the purposes of transplantation, therapy, medical research
 99 or education;

100 (c). . . . my body for anatomical study if needed.

101 Limitation or special wishes, if any: -----

102 Signed by the donor and the following two witnesses in the
103 presence of each other:

104
105	Signature of Donor	Date of Birth of Donor
106
107	Date Signed	City and State
108
109	Witness	Witness

110 This is a legal document under the Uniform Anatomical
111 Gift Act or similar laws."

CHAPTER 49

(Com. Sub. for H. B. 1166—By Mrs. Wehrle)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing registered professional nurses and licensed practical nurses to be included among those who are qualified to accompany patients being transported in ambulances; and changing term of certification from two years to three years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates.

1 After the first day of January, one thousand nine hundred
2 seventy-five, every ambulance, except those vehicles and

3 aircraft exempted in section three of this article, shall have at
4 least one of the following: Physician, osteopathic physician,
5 registered professional nurse, licensed practical nurse qualified
6 to render first aid, any state licensed health provider qualified
7 to render first aid or mobile intensive care paramedic duly
8 licensed to serve in such capacity under the laws of this state
9 or one person who possesses a valid emergency medical service
10 attendant certificate issued hereunder by the director in
11 its patient compartment at all times when a patient is being
12 transported.

13 In accordance with the provisions of chapter twenty-nine-a
14 of this code, the state board shall promulgate rules regarding
15 the age, training and physical requirements of emergency
16 medical service attendants. As a minimum training require-
17 ment, every emergency medical service attendant shall have
18 earned and possess a valid American Red Cross advanced first
19 aid certificate, or an advanced first aid certificate issued
20 by the Mine Safety and Health Administration, United
21 States Department of Labor or the equivalent thereof;
22 or have successfully completed the course on emer-
23 gency care and transportation of the sick and injured
24 recommended by the American academy of orthopedic
25 surgeons or the equivalent thereof, before he is issued
26 a certificate: *Provided*, That any member of a rescue
27 unit organized and engaged in providing ambulance ser-
28 vice prior to the first day of January, one thousand
29 nine hundred seventy-five, which is operated by a rescue
30 squad, fire department, police department, county or munic-
31 ipality of this state, who on that date is certified by the
32 respective county health officer of the county wherein such
33 unit is based, or, if there is no county health officer, by the
34 county commission or governing body of the jurisdiction
35 wherein such unit is based, that he is adequately trained
36 and is capable of performing the service required of an
37 emergency medical service attendant, shall be issued an
38 original emergency medical service attendant certificate by
39 the director upon his submitting proper application for such
40 certificate. The state board may promulgate rules for emer-
41 gency medical service attendants which exceed this minimum
42 training requirement.

43 Any person desiring certification as an emergency medical
44 service attendant shall apply to the director using forms
45 and procedures prescribed by the director. Upon receipt
46 of such application, the director shall determine if the
47 applicant meets the requirements for certification and
48 examine the applicant as, in his discretion, is necessary to
49 make such determination. If it is determined that the ap-
50 plicant meets all of the requirements, the director shall issue
51 an emergency medical service attendant certificate to the ap-
52 plicant. Emergency medical service attendant certificates
53 issued by the director shall be valid for three years from
54 the date of their issuance unless sooner suspended or revoked
55 by the director. Certificates may be renewed for additional
56 three-year periods after examination of the certificate holder
57 and determination by the director that such holder meets the
58 requirements established for emergency medical service at-
59 tendants: *Provided*, That if any county health officer of any
60 county, or, if there is no county health officer, the county
61 commission or governing body of the jurisdiction concludes
62 that any area of that jurisdiction has not been afforded the
63 necessary training or equipment to implement this section,
64 then this section shall not apply.

65 The director may issue a temporary emergency medical
66 service attendant certificate to an applicant, with or without
67 examination of the applicant, when it finds such issuance
68 to be in the public interest. Unless sooner suspended or
69 revoked, a temporary certificate shall be valid initially for a
70 period not exceeding one hundred twenty days and it shall
71 not be renewed thereafter unless it be in the public interest:
72 *Provided*, That the expiration date of any such temporary
73 certificate issued shall be extended until the holder of such
74 certificate is afforded at least one opportunity to take an
75 emergency medical care attendant training course within the
76 general area where he serves as an emergency medical service
77 attendant, but the expiration date shall not be extended for
78 any longer period of time or for any other reasons.

79 There shall be no fee or other payment required of an
80 applicant for original certification as an emergency medical
81 service attendant, or renewal of such certificate.

CHAPTER 50

(S. B. 526—By Mr. Susman)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public uses for which private property can be taken; underground storage areas and facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

1 The public uses for which private property may be
2 taken or damaged are as follows:

3 (a) For the construction, maintenance and operation
4 of railroad and traction lines (including extension, lateral
5 and branch lines, spurs, switches and sidetracks), canals,
6 public landings, wharves, bridges, public roads, streets,
7 alleys, parks and other works of internal improvement,
8 for the public use;

9 (b) For the construction and maintenance of telegraph,
10 telephone, electric light, heat and power plants, systems,
11 lines, transmission lines, conduits, stations (including
12 branch, spur and service lines), when for public use;

13 (c) For constructing, maintaining and operating pipe-
14 lines, plants, systems and storage facilities for manufac-
15 turing gas and for transporting petroleum oil, natural gas,
16 manufactured gas, and all mixtures and combinations
17 thereof, by means of pipes, pressure stations or otherwise,
18 (including the construction and operation of telephone
19 and telegraph lines for the service of such systems and

20 plants), and for underground storage areas and facilities,
21 and the operation and maintenance thereof, for the in-
22 jection, storage and removal of natural gas in subter-
23 ranean oil and/or gas bearing stratum, which, as shown
24 by previous exploration of the stratum sought to be con-
25 demned and within the limits of the reservoir proposed to
26 be utilized for such purposes, has ceased to produce or
27 has been proved to be nonproductive of oil and/or gas in
28 substantial quantities, when for public use, the extent of
29 the area to be acquired for such purpose to be determined
30 by the court on the basis of reasonable need therefor.
31 Nothing in this subsection shall be construed to interfere
32 with the power of the state and its political subdivisions to
33 enact and enforce ordinances and regulations deemed
34 necessary to protect the lives and property of citizens
35 from the effects of explosions of oil or gas;

36 (d) For constructing, maintaining and operating, water
37 plants and systems, including lines for transporting water
38 by any corporate body politic, or private corporation, for
39 supplying water to the inhabitants of any city, town,
40 village or community, for public use, including lands for
41 pump stations, reservoirs, cisterns, storage dams, and
42 other means of storing, purifying and transporting water,
43 and the right to take and damage lands which may be
44 flooded by the impounded waters, and to appropriate any
45 spring, stream and the surrounding property necessary
46 to protect, preserve and maintain the purity of any such
47 spring, stream, reservoir, cistern and water impounded by
48 means of any storage dam;

49 (e) For the purpose of constructing, maintaining and
50 operating sewer systems, lines and sewage disposal plants,
51 to collect, transport and dispose of sewage. When in the
52 interest of the public welfare and the preservation of the
53 public health, the construction of a sewer line to serve
54 a single building or institution shall be deemed a public
55 use, and, for such purpose, the right of eminent domain,
56 if within a municipal corporation, may be exercised in
57 the name of the municipal corporation, and if not within
58 a municipal corporation, in the name of the county court
59 of the county in which the property is located;

60 (f) For the reasonable use by an incorporated com-
61 pany engaged in a public enterprise of which the state or
62 any county or municipality is the sole or a part owner;

63 (g) For courthouses and municipal buildings, parks,
64 public playgrounds, the location of public monuments,
65 and all other public buildings;

66 (h) For cemeteries, and the extension and enlargement
67 of existing cemeteries: *Provided*, That no lands shall be
68 taken for cemetery purposes which lie within four hun-
69 dred feet of a dwelling house, unless to extend the boun-
70 daries of an existing cemetery, and then only in such
71 manner that the limits of the existing cemetery shall not
72 be extended nearer than four hundred feet of any dwell-
73 ing house distant four hundred feet or more from such
74 cemetery, or nearer than it was to any dwelling house
75 which is within four hundred feet thereof;

76 (i) For public schools, public libraries and public
77 hospitals;

78 (j) For the construction and operation of booms (in-
79 cluding approaches, landings and ways necessary for
80 such objects), when for a public use;

81 (k) By the state of West Virginia for any and every
82 other public use, object and purpose not herein specifi-
83 cally mentioned. By the United States of America for
84 each and every legitimate public use, need and purpose
85 of the government of the United States, within the pur-
86 view, and subject to the provisions of chapter one of this
87 code;

88 (l) For constructing, maintaining and operating pipe-
89 lines, plants, systems and storage facilities, for the trans-
90 portation by common carrier as a public utility of coal
91 and its derivatives and all mixtures and combinations
92 thereof with any substance by means of pipes, pressure
93 stations or otherwise (including the construction and
94 operation of telephone and telegraph lines for the service
95 of such systems and plants), for public use: *Provided*,
96 That the common carrier engages in some intrastate
97 activity in this state, if there is any reasonable demand

98 therefor: *Provided, however,* That in addition to all
99 other requisites by federal or state constitutions, statute
100 or common law required for the taking of private proper-
101 ty for public use, a further prerequisite and condition
102 precedent to the exercise of such taking of or damage to
103 private property for public use as in this subsection
104 hereinabove provided, is that the public service commis-
105 sion of this state, in an appropriate hearing and proceed-
106 ing on due notice to all interested persons, firms or cor-
107 porations, in accordance with the procedure now or here-
108 after established by statute and the regulations there-
109 under, shall have found that such pipeline transportation
110 of coal and its derivatives and all mixtures and combina-
111 tions thereof is required for the public convenience and
112 necessity, and that the public service commission of this
113 state shall not extend a certificate of convenience and
114 necessity or make such finding of public convenience and
115 necessity unless, in addition to the other facts required
116 to support such findings, it shall have been established
117 by the applicant therefor that the patents and other
118 similar rights under which the applicant proposes to
119 construct, maintain or operate such pipeline, plants, sys-
120 tems and storage facilities shall be and shall remain
121 equally available, insofar as said subsequent applicant
122 may determine such availability, upon fair and reason-
123 able terms, to other bona fide applicants seeking a cer-
124 tificate of convenience and necessity and finding of fact
125 for any other pipeline in West Virginia; for the purpose of
126 making the findings hereinbefore set forth the public
127 service commission shall have and exercise jurisdiction,
128 and that the aforesaid findings in this proviso above set
129 forth shall be subject to judicial review as in other public
130 service commission proceedings.

131 It is the intention of the Legislature in amending this
132 section by the addition of subdivision (1) as set forth
133 above to extend the right of eminent domain to coal pipe-
134 lines for public use; to provide for regulation of such coal
135 pipelines by the public service commission of this state
136 or the interstate commerce commission of the United
137 States of America, or both; to assure that such rights shall

138 be extended only to public utilities or common carriers
139 as distinguished from private carriers or contract car-
140 riers; to make patents covering the same equally available
141 to others on fair and reasonable terms; and to prevent
142 monopolistic use of coal pipelines by any users thereof
143 which would result in any appreciable economic detri-
144 ment to others similarly situated by reasons of any such
145 monopoly.

CHAPTER 51

(S. B. 492—By Mr. Palumbo)

[Passed March 5, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing minimum and maximum limits on the salary of the director of the purchasing division.

Be it enacted by the Legislature of West Virginia:

That section two, article one, 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 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2. Department of finance and administration and office of commissioner continued; commissioner; divisions; directors.

1 The department of finance and administration and the
2 office of commissioner of finance and administration are
3 hereby continued in the executive branch of state gov-
4 ernment. The commissioner shall be the chief executive
5 officer of the department and director of the budget and
6 shall be appointed by the governor, by and with the advice
7 and consent of the Senate, for a term not exceeding the
8 term of the governor. The commissioner shall serve at the
9 will and pleasure of the governor. The annual compensa-

10 tion of the commissioner shall be as specified in section
11 two-a, article seven, chapter six of this code. There shall
12 be in the department of finance and administration a
13 budget division, a purchasing division and a general ser-
14 vices division. Each division shall be headed by a director
15 who shall be appointed by the commissioner. The office of
16 director of the purchasing division is hereby abolished,
17 and a new office of director of the purchasing division is
18 hereby created. No person shall be appointed director of
19 the purchasing division unless that person is at the time
20 of appointment a graduate of an accredited college or
21 university and shall have spent a minimum of ten of the
22 fifteen years immediately preceding his appointment em-
23 ployed in an executive capacity in purchasing for any
24 unit of government or for any business, commercial or
25 industrial enterprise. Any person appointed as director
26 of the division shall after the appointment be subject
27 to the provisions of article six, chapter twenty-nine of
28 this code.

CHAPTER 52

(H. B. 1248—By Mr. Warner)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five-a, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-b of said chapter, all relating to obtaining a suggestee execution without first having an execution returned unsatisfied; and conforming said section to federal statutory requirements.

Be it enacted by the Legislature of West Virginia:

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

Article

5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

5B. Suggestion of the State and Political Subdivisions; Garnishment and Suggestion of Public Officers.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.

1 A judgment creditor may apply to the court in which the
2 judgment was recovered or a court having jurisdiction of the
3 same, without notice to the judgment debtor, for a suggestee
4 execution against any money due or to become due within
5 one year after the issuance of such execution to the judgment
6 debtor as salary or wages arising out of any private employ-
7 ment. If satisfactory proof shall be made, by affidavit or
8 otherwise, of such facts and the fact that the amount due or to
9 become due as salary or wages after the deduction of all state
10 and federal taxes exceeds in any week thirty times the federal
11 minimum hourly wage then in effect, the court, if not a court
12 of record, or if a court of record, the clerk thereof, shall issue
13 a suggestee execution against the salary or wages of the judg-
14 ment debtor and upon presentation of such execution by the
15 officer to whom delivered for collection to the person or per-
16 sons from which such salary or wages are due and owing or
17 thereafter may become due and owing to the judgment debtor,
18 the execution and the expenses thereof shall become a lien and
19 continuing levy upon the salary or wages due or to become
20 due to the judgment debtor within one year after the issuance
21 of the same, unless sooner vacated or modified as hereinafter
22 provided, to an amount equal to twenty per centum thereof
23 and no more, but in no event shall the payments in satisfaction
24 of such an execution reduce the amount payable to the judg-
25 ment debtor to an amount per week that is less than thirty
26 times the federal minimum hourly wage then in effect. Only
27 one such execution shall be satisfied, at one time, except that
28 in the event two or more such executions have been served
29 and satisfaction of the one having priority is completed without

30 exhausting the amount of the salary or wages then due
31 and payable that is subject to suggestion under this article the
32 balance of such amount shall be paid in satisfaction, in the
33 order of their priority, of junior suggestee executions against
34 such salary or wages theretofore served.

**ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUB-
DIVISIONS; GARNISHMENT AND SUGGESTION OF
PUBLIC OFFICERS.**

**§38-5B-2. Application for suggestee execution against money from
state, state agency or political subdivision; extent of
lien and continuing levy; priority among suggestee
executions.**

1 A judgment creditor may apply to the court in which the
2 judgment was recovered or a court having jurisdiction of the
3 same, without notice to the judgment debtor, for a sug-
4 gestee execution against any money due or to become due
5 within one year after the issuance of the same to the judgment
6 debtor from the state, a state agency, or any political sub-
7 division of the state. If satisfactory proof shall be made, by
8 affidavit or otherwise, of such facts, and, where the execution
9 is sought against salary or wages, of the fact that the amount
10 due or to become due as salary or wages after the deduction of
11 state and federal taxes exceeds in any week thirty times the
12 federal minimum hourly wage then in effect, the court, if
13 not a court of record, or if a court of record, the clerk thereof,
14 shall issue a suggestee execution against such money due or to
15 become due to the judgment debtor, and there shall be entered
16 on the face thereof the day and hour of issuance.

17 Such execution and the expenses thereof shall, when served
18 by the officer to whom delivered for collection in the manner
19 hereinafter provided, upon the state, a state agency or political
20 subdivision from which such money is due or may thereafter
21 become due to the judgment debtor, become a lien and con-
22 tinuing levy upon the sums due or to become due to the
23 judgment debtor within one year after the issuance of the
24 same (but not to exceed twenty per centum of the salary or
25 wages due to such judgment debtor or reduce the amount
26 received by him per week to an amount less than thirty times

27 the federal minimum hourly wage then in effect) unless sooner
28 satisfied and paid, vacated or modified as hereinafter provided.

29 Where more than one suggestee execution shall have been
30 issued pursuant to the provisions of this section against
31 the same judgment debtor, they shall be satisfied in the
32 order of priority in which they are served upon the state,
33 state agency or political subdivision from which such money
34 is due or shall become due. For purposes of determining
35 such priority the time that an execution served by mail, as
36 hereinafter provided shall be received, and not the time of
37 admission of service shall control. In the case of two or
38 more executions received in the same mail delivery priority
39 shall be accorded the one first issued.

CHAPTER 53

(S. B. 211—By Mr. Boettner)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the welfare of handicapped children; formulation of an advisory board of physicians; setting the terms and requirements for board members; reporting the birth of a handicapped child; and cost of treatment of handicapped children.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. HANDICAPPED CHILDREN.

- §49-4-1. Purpose.
- §49-4-2. Children to whom article applies.
- §49-4-3. Powers of state department.
- §49-4-4. Advisory board of physicians.
- §49-4-5. Report of birth of handicapped child.

§49-4-6. Assistance by other agencies.

§49-4-7. Cost of treatment.

§49-4-1. Purpose.

1 The purpose of this article is to provide for the con-
2 tinuation and development of services for handicapped
3 children. The state department shall formulate and
4 apply administrative policies concerning the care and
5 treatment of physically handicapped children and shall
6 cooperate with other agencies responsible for such care
7 and treatment.

8 In the development of administrative policies, the
9 state department shall cooperate with the United States
10 department of health, education and welfare and shall
11 comply with the regulations that agency prescribes under
12 the authority of the "Social Security Act," and is hereby
13 authorized to receive and expend federal funds for these
14 services.

§49-4-2. Children to whom article applies.

1 It is the intention of this article that services for handi-
2 capped children shall be extended only to those children
3 for whom adequate care, treatment and rehabilitation are
4 not available from other than public sources.

§49-4-3. Powers of state department.

1 In the care and treatment of handicapped children the
2 state department shall, so far as funds are available for
3 the purpose:

4 (1) Locate handicapped children requiring medical,
5 surgical, or other corrective treatment and provide com-
6 petent diagnoses to determine the treatment required.

7 (2) Supply to handicapped children treatment, in-
8 cluding hospitalization and aftercare leading to correction
9 and rehabilitation.

10 (3) Guide and supervise handicapped children to
11 assure adequate care and treatment.

§49-4-4. Advisory board of physicians.

1 The state commissioner shall designate a board of

2 seven physicians, of recognized ability, to serve in an
3 advisory capacity in giving effect to the provisions of
4 this article. These physicians shall be board certified
5 specialists representing the various major medical com-
6 ponents of the program. In addition to the seven board
7 members, physicians representing other board specialties
8 and representatives of paramedical professions such as
9 nursing and medical social work may be appointed to
10 serve the board in an ad hoc capacity at the commis-
11 sioner's discretion. The board members and ad hoc ap-
12 pointees shall serve without pay, except for reasonable
13 expenses actually incurred. The members of the board
14 shall be appointed for terms of four years, except that,
15 as to the original appointments, three members shall
16 be appointed for terms of four years each; two members
17 shall be appointed for terms of three years each; two
18 members shall be appointed for terms of two years each.
19 As the term of each original appointee expires, his suc-
20 cessor shall be appointed for a term of four years. The
21 member shall serve until a successor is named. No
22 member shall be eligible for appointment to more than
23 two consecutive terms. Any vacancy shall be filled by
24 appointment of the commissioner within sixty days from
25 the date of vacancy.

26 The board shall:

27 (1) Consult with the state board and state commis-
28 sioner with respect to the plans, policies and methods of
29 the state department for giving effect to this article.

30 (2) Examine the credentials and confirm the appoint-
31 ment of physicians servicing the program.

32 (3) Examine the facilities and recommend the institu-
33 tions in which handicapped children may be hospitalized
34 by the state department.

§49-4-5. Report of birth of handicapped child.

1 Within thirty days after the birth of a child with a
2 congenital deformity, the physician, midwife, or other
3 person attending the birth shall report to the state depart-
4 ment, on forms prescribed by them, the birth of such
5 child.

- 6 The report shall be solely for the use of the state
7 department and shall not be open for public inspection.

§49-4-6. Assistance by other agencies.

- 1 So far as practicable, the services and facilities of the
2 state departments of health, education, vocational re-
3 habilitation and corrections shall be available to the state
4 department for the purposes of this article.

§49-4-7. Cost of treatment.

- 1 All payments from any corporation, association, pro-
2 gram or fund providing insurance coverage or other pay-
3 ment for medicine, medical, surgical and hospital treat-
4 ment, crutches, artificial limbs and such other and addi-
5 tional approved mechanical appliances and devices as
6 may be reasonably required for a handicapped child, shall
7 be applied toward the total cost of treatment.

CHAPTER 54

(H. B. 1036—By Mr. Teets)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to power of the state board of health to promulgate rules and regulations; and providing that the board has no authority to promulgate rules and regulations restricting the subdivision or development of land used as single family dwelling units when total surface area of the land exceeds two acres.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.**§16-1-7. Promulgation of rules and regulations; references to board to mean director of health.**

1 The state board of health shall have the power to
2 promulgate such rules and regulations, in accordance with
3 the provisions of chapter twenty-nine-a of the code, as are
4 necessary and proper to effectuate the purposes of this chap-
5 ter and prevent the circumvention and evasion thereof:
6 *Provided*, That no rules or regulations shall be promulgated
7 or enforced restricting the subdivision or development of
8 any parcel of land within which the individual tracts, lots
9 or parcels exceed two acres each in total surface area and
10 which individual tracts, lots or parcels have an average
11 frontage of not less than one hundred fifty feet even though
12 the total surface area of said tract, lot or parcel equals
13 or exceeds two acres in total surface area, and which tracts
14 are sold, leased or utilized only as single family dwelling
15 units. The provisions next above notwithstanding, nothing
16 in this section shall be construed to abate the authority of
17 the state health department to: (1) Restrict the subdivision or
18 development of such tract for any more intense or higher
19 density occupancy than such single family dwelling unit; (2)
20 promulgate and enforce rules and regulations applicable to
21 single family dwelling units for single family dwelling unit
22 sanitary sewage disposal systems, or (3) restrict any subdivision
23 or development which might endanger the public health, the
24 sanitary condition of streams, or sources of water supply. The
25 board shall have the power to appoint or designate advisory
26 councils of professionals in the areas of hospitals, nursing
27 homes, barbers and beauticians, postmortem examinations,
28 mental health and mental retardation centers and such other
29 areas as it deems necessary to advise the board on rules and
30 regulations. Such rules and regulations shall include, but not
31 be limited to, the regulation of:

32 (1) The sanitary condition of all institutions and schools,
33 whether public or private, public conveyances, dairies, slaugh-
34 terhouses, workshops, factories, labor camps, all other places
35 open to the general public and inviting public patronage or pub-

36 lic assembly, or tendering to the public any item for human con-
37 sumption, and places where trades or industries are conducted;

38 (2) Occupational and industrial health hazards, the sanitary
39 conditions of streams, sources of water supply, sewerage facili-
40 ties and plumbing systems, and the qualifications of personnel
41 connected with any of such facilities, without regard to whether
42 such supplies or systems, are publicly or privately owned; and
43 the design of all water systems, plumbing systems, sewerage
44 systems, sewage treatment plants, excreta disposal methods,
45 swimming pools in this state, whether publicly or privately
46 owned;

47 (3) Food and drug standards, including cleanliness, pro-
48 scription of additives, proscription of sale, and other require-
49 ments in accordance with article seven of this chapter, as are
50 necessary to protect the health of the citizens of this state;

51 (4) The training and examination requirements for emer-
52 gency medical service attendants and mobile intensive care
53 paramedics; the designation of the health care facilities, health
54 care services, and the industries and occupations in the state
55 which must have emergency medical service attendants and
56 mobile intensive care paramedics employed, and the avail-
57 ability, communications, and equipment requirements with
58 respect thereto;

59 (5) The collection of data on health status, the health sys-
60 tem and the costs of health care;

61 (6) Other health-related matters which the department of
62 health is authorized to supervise, and for which the rule-
63 making authority has not been otherwise assigned.

64 Notwithstanding any other provision of this code to the
65 contrary, whenever in this code there is a reference to the
66 state board of health and such reference does not relate to the
67 making or promulgation of rules and regulations, it shall be
68 construed to mean and shall be a reference to the director of
69 the state department of health.

CHAPTER 55

(H. B. 952—By Mr. Ketchum and Mr. Otto)

[Passed March 6, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to having state director of health acquire vaccines, expanding list of vaccines to include polio, measles, mumps, rubella and pertussis, making the vaccines available to all citizens, deleting language concerning distribution of vaccine to drugstores, providing for distribution of vaccine by county and municipal health officers and requiring county and municipal health officers to provide the state director of health with a receipt for delivered vaccine.

Be it enacted by the Legislature of West Virginia:

That section five, article three, 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 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-5. Distribution of free vaccine preventives of disease.

1 The state director of health shall acquire vaccine for the
2 prevention of polio, measles, mumps, rubella, diphtheria, per-
3 tussis, tetanus, smallpox and other vaccine preventives of
4 disease as may be deemed necessary or required by law, and
5 shall distribute the same, free of charge, in such quantities as
6 he may deem necessary, to county and municipal health offi-
7 cers, to be used by them for the benefit of, and without ex-
8 pense to the citizens within their respective jurisdictions, to
9 check contagions and control epidemics.

10 The county and municipal health officers shall have the re-
11 sponsibility to properly store and distribute, free of charge,
12 vaccines to private medical or osteopathic physicians within
13 their jurisdictions to be utilized to check contagions and con-
14 trol epidemics: *Provided*, That the private medical or osteo-

- 15 pathic physicians shall not make a charge for the vaccine itself
16 when administering it to a patient. The county and municipal
17 health officers shall provide a receipt to the state director of
18 health for any vaccine delivered as herein provided.

CHAPTER 56

(Com. Sub. for S. B. 366—By Mr. Hanlon)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto five new sections, designated sections six, seven, eight, nine and ten, relating to establishing a system of strictly controlling research and therapeutic uses of marihuana for the alleviation of nausea and ill effects of cancer chemotherapy and the ill effects of glaucoma by the department of health; defining certain terms; establishing a controlled substance therapeutic research program in the department of health; establishing a patient qualification review board; appointment and reimbursement of members; and requiring a report of the effectiveness of the program to the governor and the Legislature.

Be it enacted by the Legislature of West Virginia:

That article five-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto five new sections, designated sections six, seven, eight, nine and ten, to read as follows:

ARTICLE 5A. CANCER CONTROL.

§16-5A-6. Definitions.

§16-5A-7. Controlled substances therapeutic research program established; participation.

§16-5A-8. Appointment of patient qualification review board; composition; powers and duties.

§16-5A-9. Contract for receipt of marihuana; distribution.

§16-5A-10. Report.

§16-5A-6. Definitions.

1 As used in this article:

2 (1) "Director" means the director of the department of
3 health, or his designee;

4 (2) "Marihuana" means marihuana, tetrahydrocan-
5 nabinols or a chemical derivative of tetrahydrocanni-
6 nol; and

7 (3) "Practitioner" means a physician licensed to pre-
8 scribe and administer drugs which are subject to the
9 controlled substances act.

§16-5A-7. Controlled substances therapeutic research program established; participation.

1 (a) There is established in the department of health
2 the "controlled substances therapeutic research pro-
3 gram." The program shall be administered by the direc-
4 tor. The department shall promulgate rules and regula-
5 tions necessary for the proper administration of the pro-
6 visions of this article. In such promulgation, the depart-
7 ment shall take into consideration all pertinent rules and
8 regulations promulgated by the state board of pharmacy,
9 the drug enforcement administration, the food and drug
10 administration, and the national institute on drug abuse.

11 (b) Except as provided in subsection (c), section eight
12 of this article, the controlled substances therapeutic re-
13 search program shall be limited to cancer chemotherapy
14 patients and glaucoma patients who are certified to the
15 patient qualification review board by a practitioner as
16 being involved in a life-threatening or sense-threatening
17 situation and who are not responding to conventional
18 controlled substances or where the conventional con-
19 trolled substances administered have proven to be effec-
20 tive, but where the patient has incurred severe side effects.

§16-5A-8. Appointment of patient qualification review board; composition; powers and duties.

1 (a) The director shall appoint a patient qualification
2 review board to serve at his pleasure. The patient qualifi-
3 cation review board shall be comprised of:

4 (1) A physician licensed to practice medicine in West
5 Virginia and certified by the American board of ophthal-
6 mology;

7 (2) A physician licensed to practice medicine in West
8 Virginia and certified by the American board of internal
9 medicine and also certified in the subspecialty of medical
10 oncology or hematology; and

11 (3) A physician licensed to practice medicine in West
12 Virginia and certified by the American board of psychia-
13 try.

14 Members of the board may be reimbursed for their
15 attendance at meetings at the rate of forty dollars per day.

16 (b) The patient qualification review board shall review
17 all applicants for the controlled substances therapeutic
18 research program and their licensed practitioners and
19 certify their participation in the program. The board shall
20 additionally certify practitioners and licensed pharmacies
21 for participation regarding the distribution of marihuana
22 pursuant to the provisions of section nine of this article.

23 (c) The patient qualification review board may include
24 other disease groups for participation in the controlled
25 substances therapeutic research program after pertinent
26 medical data has been presented by a practitioner to both
27 the administrator and the board.

§16-5A-9. Contract for receipt of marihuana; distribution.

1 (a) The director shall apply to contract with the
2 national institute on drug abuse or any federally regis-
3 tered distributor or manufacturer for receipt of marihua-
4 na pursuant to and in accordance with regulations prom-
5 ulgated by the national institute on drug abuse, the food
6 and drug administration and the drug enforcement ad-
7 ministration and pursuant to the provisions of this article.

8 (b) The director may cause such analyzed marihuana
9 to be transferred to a certified licensed pharmacy for
10 distribution to the certified patient upon the written
11 prescription of the certified practitioner, pursuant to the
12 provisions of this article.

§16-5A-10. Report.

1 The director, in conjunction with the patient qualifica-
2 tion review board, shall report his findings and recom-
3 mendations to the governor and the Legislature, re-
4 garding the effectiveness of the controlled substances
5 therapeutic research program.

CHAPTER 57

(Com. Sub. for S. B. 185—By Mr. Huffman)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-f, relating to public disclosure of the financial position of certain health care facilities in the state of West Virginia; stating legislative findings and purposes; defining terms; relating to powers and duties of the director; providing for the promulgation of rules and regulations by the director; empowering the director to require financial reporting by health care facilities; publication of certain reports; right of inspection; providing for enforcement of reporting by the attorney general; penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5F. HEALTH CARE FACILITY FINANCIAL DISCLOSURE.

- §16-5F-1. Legislative findings; purpose; intent of article.
- §16-5F-2. Definitions.
- §16-5F-3. General powers and duties of the director of the department of health regarding reporting and review.
- §16-5F-4. Reports required to be published and filed; form of reports; right of inspection.
- §16-5F-5. Injunctions.
- §16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

§16-5F-1. Legislative findings; purpose; intent of article.

1 (1) The West Virginia Legislature finds that the rising
2 cost of health care and services provided by health care
3 facilities are matters of vital concern to the people of this
4 state and have a direct relationship to the ability of the
5 people to obtain necessary health care.

6 (2) The citizens of this state have an inherent right to
7 receive and have available to them health care programs
8 and services which are capable of meeting individual
9 needs.

10 (3) Such services should be available to all citizens in
11 all regions of this state.

12 (4) The furnishing of health care services is an essen-
13 tial public service.

14 (5) The public has a right to know the financial posi-
15 tion of hospitals and related facilities.

16 It is the purpose of this article to provide that the fa-
17 cilities covered herein shall make a public disclosure of
18 their financial position and to bring about a review as to
19 the reasonableness of the costs of health care services.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) "Annual report" means an annual financial report
3 for the covered facility's fiscal year prepared by an ac-
4 countant or the covered facility's auditor.

5 (2) "Department of health" means the West Virginia
6 department of health.

7 (3) "Director" means the director of the department of
8 health.

9 (4) "Covered facility" means any hospital or other
10 health care facility with fifteen or more inpatient beds,
11 whether publicly owned, operated for profit or operated
12 as a not for profit facility and whether licensed, or un-
13 licensed, but shall not include personal care homes as the
14 same are defined in section two, article five-c, chapter

15 sixteen of the code of West Virginia, one thousand nine
16 hundred thirty-one, as amended.

17 (5) "Rates" means all rates, fees or charges imposed by
18 any covered facility for health care services.

19 (6) "Records" includes accounts, books, charts, con-
20 tracts, documents, files, maps, papers, profiles, reports,
21 annual and otherwise, schedules and any other fiscal data,
22 however recorded or stored.

23 (7) "Health systems agency" means any agency created
24 by Public Law 93-641.

**§16-5F-3. General powers and duties of the director of the
department of health regarding reporting and re-
view.**

1 (a) In addition to the powers granted to the director
2 of the department of health elsewhere in this article, the
3 director shall have the powers as indicated by this section
4 and it shall be his duty to:

5 (1) Promulgate rules and regulations in accordance
6 with the provisions of article three, chapter twenty-nine-
7 a of this code, to implement and make effective the pow-
8 ers, duties and responsibilities contained in the provisions
9 of this article.

10 (2) Require the filing of fiscal information by covered
11 facilities relating to any matter affecting the cost of
12 health care services in this state.

13 (3) Exercise, subject to the limitations and restrictions
14 herein imposed, all other powers which are reasonably
15 necessary or essential to carry out the expressed purposes
16 of this article.

17 (b) The director shall also investigate and recommend
18 to the Legislature whether other health care providers
19 should be made subject to the provisions of this article.

20 (c) The director shall, not later than December thirty-
21 first of each year, prepare and transmit to the governor
22 and to the clerks of both houses of the Legislature a re-
23 port containing the material and data as required by

24 section four of this article, based upon the most recent
25 data available.

26 (d) The director shall distribute an identical copy of
27 the published annual report and the report containing
28 the material and data as required by section four of this
29 article to the West Virginia health systems agency for
30 distribution to regional health advisory bodies or such
31 other official activities of the health systems agency.

§16-5F-4. Reports required to be published and filed; form of reports; right of inspection.

1 (a) Every covered facility as defined in this article,
2 within one hundred twenty days after the end of each
3 covered facility's fiscal year, unless an extension be
4 granted by the director for good cause shown, shall be
5 required to file with the director and publish, as a Class I
6 legal advertisement, pursuant to section two, article three,
7 chapter fifty-nine of the code of West Virginia, in a
8 qualified newspaper published within the county within
9 which such covered facility is located, an annual report
10 prepared by the covered facility's auditor or an independ-
11 ent accountant.

12 Such report shall contain a complete statement of the
13 following:

14 (1) Assets and liabilities;

15 (2) Income and expenses;

16 (3) Profit or loss for the period reported;

17 (4) A statement of ownership for persons owning more
18 than five percent of the capital stock outstanding and the
19 dividends paid thereon, if any, and to whom paid for the
20 period reported unless the covered facility be duly regis-
21 tered on the New York stock exchange, American stock
22 exchange, any regional stock exchange, or its stock traded
23 actively over the counter. Such statement shall further
24 contain a disclosure of ownership by any parent company
25 or subsidiary, if applicable.

26 Such annual report shall also include a prominent no-
27 tice that the details concerning the contents of the adver-

28 tisement, together with the other reports, statements and
29 schedules required to be filed with the director by the
30 provisions of this section, shall be available for public
31 inspection and copying at the director's office.

32 (b) Every covered facility shall also file with the direc-
33 tor the following statements, schedules or reports in such
34 form and at such intervals as may be specified by the
35 director, but at least annually:

36 (1) A statement of services available and services
37 rendered;

38 (2) A statement of the total financial needs of such
39 covered facility and the resources available or expected
40 to become available to meet such needs;

41 (3) A complete schedule of such covered facility's then
42 current rates with costs allocated to each category of
43 costs, in accordance with the rules and regulations as
44 promulgated by the director pursuant to section three
45 hereof;

46 (4) A copy of such reports made or filed with the fed-
47 eral health care financing administration, or its successor,
48 as the director may deem necessary or useful to accom-
49 plish the purposes of this article;

50 (5) A statement of all charges, fees or salaries for goods
51 or services rendered to the covered facility for the period
52 reported which shall exceed the sum of fifty-five thousand
53 dollars and a statement of all charges, fees or other sums
54 collected by the covered facility for or on the account of
55 any person, firm, partnership, corporation or other entity,
56 however structured, which shall exceed the sum of fifty-
57 five thousand dollars during the period reported;

58 (6) Such other reports of the costs incurred in render-
59 ing services as the director may prescribe. The director
60 may require the certification of specified financial reports
61 by the covered facility's auditor or independent account-
62 tant.

63 (c) Notwithstanding any provision to the contrary
64 herein, any data or material that is furnished to the direc-

65 tor pursuant to the provisions of subdivision four,
66 subsection(b) of this section need not be duplicated by
67 any other requirements of this section requiring the filing
68 of data and material.

69 (d) No report, statement, schedule or other filing re-
70 quired or permitted to be filed hereunder shall contain
71 any medical or individual information personally identifi-
72 able to a patient or a consumer of health services, wheth-
73 er directly or indirectly. All such reports, statements
74 and schedules filed with the director under this section
75 shall be open to public inspection and shall be available
76 for examination during regular hours. Copies of such
77 reports shall be made available to the public upon request
78 and the director may establish fees reasonably calculated
79 to reimburse the department for its actual costs in making
80 copies of such reports.

81 Whenever further fiscal information is deemed neces-
82 sary to verify the accuracy of any information set forth
83 in any statement, schedule or report filed by a covered
84 facility under the provisions of this article, the director
85 shall have the authority to require the production of any
86 records necessary to verify such information.

87 (f) From time to time, the director shall engage in or
88 carry out analyses and studies relating to health care
89 costs, the financial status of any covered facility or any
90 other appropriate related matters, and make determina-
91 tions of whether, in his opinion, the rates charged by a
92 covered facility are economically justified.

§16-5F-5. Injunctions.

1 Whenever it appears that any covered facility, required
2 to file or publish such reports, as provided in this article,
3 has failed to file or publish such reports, the attorney gen-
4 eral, upon the request of the director, may apply in the
5 name of the state to, and the circuit court of the county
6 in which such covered facility is located shall have juris-
7 diction for the granting of a mandatory injunction to
8 compel compliance with the provisions of this article.

§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

1 Every covered facility failing to make and transmit to
2 the director any of the reports required by law or failing
3 to publish or distribute the reports as so required, shall
4 forthwith be notified by the director and, if such failure
5 continues for ten days after receipt of said notice, such
6 delinquent facility shall be subject to a penalty of one
7 thousand dollars for each day thereafter that such failure
8 continues, such penalty to be recovered by the director
9 through the attorney general in a civil action and paid
10 into the state treasury to the account of the general fund.
11 Review of any final judgment or order of the circuit court
12 shall be by appeal to the West Virginia supreme court of
13 appeals.

CHAPTER 58

(Com. Sub. for H. B. 795—By Mr. Martin, 35th District, and Mr. Moler)

[Passed February 23, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to the conducting of local option elections in counties having horse or dog racetracks into the question of permitting the holding of racing meets on Sundays; the procedures with respect to such elections; the form of the ballot or ballot labels with respect thereto; and the effect of the results of such election.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.**PART V-A. LOCAL OPTION ELECTION
CONCERNING SUNDAY RACING.****§19-23-8a. Local option election procedure; form of ballot or
ballot labels; effect of such election.**

1 (a) The county commission of any county in which a horse
2 or dog race meeting is licensed under the provisions of section
3 one of this article is hereby authorized to call a local option
4 election for the purpose of determining the will of the quali-
5 fied voters within said county as to whether the racing com-
6 mission, notwithstanding any other provision of law, shall
7 approve an application for a license which contains racing
8 dates which fall on Sunday, if the application and the appli-
9 cant are otherwise in compliance with the provisions of this
10 article. Such approval shall limit Sunday racing to the hours
11 between one p.m. and six p.m., local time.

12 (b) The county commission may, and upon the written pe-
13 tition of qualified voters residing within the county equal to at
14 least fifteen percent of the number of persons who voted in
15 that county in the next preceding general election, which pe-
16 tition may be in any number of counterparts, shall order an
17 election to determine whether it is the will of the voters of
18 said county that racing be permitted on Sundays in said
19 county.

20 (c) No election to determine whether it is the will of the
21 voters of said county that racing be permitted on Sundays in
22 said county shall be held at a general or primary election or
23 within sixty days of any such election or in conjunction with
24 any other election.

25 (d) The county commission shall give notice of such elec-
26 tion by publication of such notice as a Class II-O legal adver-
27 tisement in accordance with the provisions of article three,
28 chapter fifty-nine of this code. Such notice shall be published
29 within twenty-one consecutive days next preceding the date
30 of said election.

31 (e) The ballot, or the ballot labels where voting machines are
32 used, shall have printed thereon substantially the following:

33 "Shall the West Virginia Racing Commission be authorized
34 to approve horse racing on Sundays between the hours of
35 one p.m. and six p.m. in County,
36 West Virginia?

37 Yes No

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

39 In a county in which dog racing is conducted, the term
40 "dog racing" shall be substituted for "horse racing" on the
41 ballot or ballot label.

42 (f) Each individual qualified to vote in said county shall
43 be qualified to vote at the local option election. The votes in
44 said local option election shall be counted and returns made
45 by the election officers and the results certified by the com-
46 missioners of election to said county commission, which shall
47 canvass the ballots, all in accordance with the laws of this
48 state relating to general elections insofar as the same are ap-
49 plicable. The county commission shall, without delay, can-
50 vass the votes cast at such local option election and certify
51 the results thereof to the racing commission, and shall trans-
52 mit a certified copy of said results to the secretary of state.

53 (g) The racing commission shall, after the certification of
54 the results of such local option election, thereafter approve an
55 application for a license which contains racing dates which fall
56 on Sunday if a majority of the voters voting at such local option
57 election vote yes, and on such racing dates all racing and other
58 activities authorized by this article shall be lawful, any other
59 provision of this code to the contrary notwithstanding.

60 (h) After an election to determine whether it is the will of
61 the voters of said county that racing be permitted on Sundays
62 in said county, another election on such issue shall not be held
63 for a period of five years.

64 (i) If at such election a majority of the voters of said coun-
65 ty shall approve racing on Sundays in said county, it shall be
66 lawful for the county commission, after five years from such
67 approval, and it shall be the duty of the county commission
68 upon a petition in writing of qualified voters residing within
69 the county equal to at least fifteen percent of the number of

70 persons who voted in that county in the next preceding general
71 election, which petition may be in any number of counterparts,
72 to order an election to determine whether it is the will of the
73 voters of said county that racing on Sundays be discontinued
74 in said county. The provisions of subsections (c), (d) and
75 (f) of this section shall govern said election. The ballot, or the
76 ballot labels where voting machines are used, shall have print-
77 ed thereon substantially the following:

78 "Shall racing of horses on Sunday in
79 County, West Virginia, be discontinued?"

80 Yes No

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

82 In a county in which dog racing is conducted, the word "dogs"
83 shall be substituted for "horses" on the ballot or ballot label.
84 If it be the will of a majority of the voters of said county that
85 Sunday racing be discontinued in said county, it shall be the
86 duty of the racing commission thereafter, for a period of at
87 least five years and until a subsequent election shall otherwise
88 direct, to deny applications to race on Sundays in said county.

CHAPTER 59

(H. B. 871—By Mr. Speaker, Mr. See)

[Passed February 8, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to revising the authorized limit on borrowing of the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.**§31-18-20. Authorized limit on borrowing.**

1 The aggregate principal amount of bonds and notes issued
2 by the housing development fund shall not exceed five hun-
3 dred million dollars outstanding at any one time: *Provided*,
4 That in computing the total amount of bonds and notes which
5 may at any one time be outstanding, the principal amount of
6 any outstanding bonds or notes refunded or to be refunded
7 either by application of the proceeds of the sale of any re-
8 funding bonds or notes of the housing development fund or by
9 exchange for any such refunding bonds or notes, shall be
10 excluded.

CHAPTER 60

(S. B. 88—By Mr. Moreland and Mr. Hinkle)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections two-a and two-b, article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter forty-four of said code by adding thereto a new article, designated article six-a, relating to adoption of the "Uniform Management of Institutional Funds Act"; short title; definitions; appreciation; investment authority; delegation of management; standard of conduct; release of restrictions on use of investment; and uniformity of application and construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

§44-6A-1. Short title.

§44-6A-2. Definitions.

§44-6A-3. Appropriation of appreciation; rule of construction.

§44-6A-4. Investment authority.

§44-6A-5. Delegation of investment management.

§44-6A-6. Standard of conduct.

§44-6A-7. Release of restrictions on use or investment; application of cy pres doctrine.

§44-6A-8. Uniformity of application; construction.

§44-6A-1. Short title.

- 1 This article shall be known as the "Uniform Manage-
- 2 ment of Institutional Funds Act."

§44-6A-2. Definitions.

- 1 The following words or phrases as used in this article
- 2 shall have the meanings ascribed to them in this section,
- 3 unless the context of this article clearly indicates other-
- 4 wise:

- 5 (a) "Endowment fund" means an institutional fund,
- 6 or any part thereof, not wholly expendable by the institu-
- 7 tion on a current basis under the terms of the applicable
- 8 gift instrument;

- 9 (b) "Gift instrument" means a will, deed, grant, con-
- 10 veyance, agreement, memorandum, writing or other gov-
- 11 erning document (including the terms of any institu-
- 12 tional solicitations from which an institutional fund re-
- 13 sulted) under which property is transferred to or held
- 14 by an institution as an institutional fund;

- 15 (c) "Governing board" means the body responsible
- 16 for the management of an institution or of an institu-
- 17 tional fund;

- 18 (d) "Historic dollar value" means the aggregate fair
- 19 value in dollars of (i) an endowment fund at the time it
- 20 became an endowment fund, (ii) each subsequent dona-
- 21 tion to the fund at the time it is made, and (iii) each
- 22 accumulation made pursuant to a direction in the appli-
- 23 cable gift instrument at the time the accumulation is

24 added to the fund. The determination of historic dollar
25 value made in good faith by the institution is conclusive;

26 (e) "Institution" means an incorporated or unincor-
27 porated organization organized and operated exclusively
28 for educational, religious, charitable or other eleemosy-
29 nary purpose, or a governmental organization to the
30 extent that it holds funds exclusively for any of these
31 purposes;

32 (f) "Institutional fund" means a fund held by an in-
33 stitution for its exclusive use, benefit or purposes, but
34 does not include (i) a fund held for an institution by a
35 trustee that is not an institution or (ii) a fund in which
36 a beneficiary that is not an institution has an interest,
37 other than possible rights that could arise upon violation
38 or failure of the purposes of the fund.

§44-6A-3. Appropriation of appreciation; rule of construction.

1 (a) The governing board may appropriate for expen-
2 diture for the uses and purposes for which an endowment
3 fund is established so much of the net appreciation, re-
4 alized and unrealized, in the fair value of the assets of an
5 endowment fund over the historic dollar value of the fund
6 as is prudent under the standard established by section
7 six of this article. This section does not limit the authority
8 of the governing board to expend funds as permitted
9 under other law, the terms of the applicable gift instru-
10 ment, or the charter of the institution.

11 (b) Subsection (a) of this section does not apply if
12 the applicable gift instrument indicates the donor's in-
13 tention that net appreciation shall not be expended. A
14 restriction upon the expenditure of net appreciation may
15 not be implied from a designation of a gift as an endow-
16 ment, or from a direction or authorization in the appli-
17 cable gift instrument to use only "income," "interest,"
18 "dividends," or "rents, issues or profits," or "to preserve
19 the principal intact," or a direction which contains other
20 words of similar import. This rule of construction applies
21 to gift instruments executed or in effect before or after
22 the effective date of this article.

§44-6A-4. Investment authority.

1 In addition to an investment otherwise authorized by
2 law or by the applicable gift instrument, and without
3 restriction to investments a fiduciary may make, the
4 governing board, subject to any specific limitations set
5 forth in the applicable gift instrument or in the appli-
6 cable law other than law relating to investments by a
7 fiduciary, may:

8 (a) Invest and reinvest an institutional fund in any
9 real or personal property deemed advisable by the gov-
10 erning board, whether or not it produces a current re-
11 turn, including mortgages, stocks, bonds, debentures and
12 other securities of profit or nonprofit corporations, shares
13 in or obligations of associations, partnerships or individ-
14 uals, and obligations of any government or subdivision
15 or instrumentality thereof;

16 (b) Retain property contributed by a donor to an
17 institutional fund for as long as the governing board
18 deems advisable;

19 (c) Include all or any part of an institutional fund in
20 any pooled or common fund maintained by the institu-
21 tion; and

22 (d) Invest all or any part of an institutional fund in
23 any other pooled or common fund available for invest-
24 ment, including shares or interests in regulated invest-
25 ment companies, mutual funds, common trust funds,
26 investment partnerships, real estate investment trusts or
27 similar organizations in which funds are commingled and
28 investment determinations are made by persons other
29 than the governing board.

§44-6A-5. Delegation of investment management.

1 Except as otherwise provided by the applicable gift
2 instrument or by applicable law relating to governmental
3 institutions or funds, the governing board may (1) dele-
4 gate to its committees, officers or employees of the insti-
5 tution or the fund, or agents, including investment coun-
6 sel, the authority to act in place of the board in invest-

7 ment and reinvestment of institutional funds, (2) con-
8 tract with independent investment advisors, investment
9 counsel or managers, banks or trust companies, so to act,
10 and (3) authorize the payment of compensation for in-
11 vestment advisory or management services.

§44-6A-6. Standard of conduct.

1 In the administration of the powers to appropriate
2 appreciation, to make and retain investments, and to
3 delegate investment management of institutional funds,
4 members of a governing board shall exercise ordinary
5 business care and prudence under the facts and circum-
6 stances prevailing at the time of the action or decision.
7 In so doing they shall consider long and short term needs
8 of the institution in carrying out its educational, religious,
9 charitable or other eleemosynary purposes, its present
10 and anticipated financial requirements, expected total
11 return on its investments, price level trends and general
12 economic conditions.

**§44-6A-7. Release of restrictions on use or investment; appli-
cation of cy pres doctrine.**

1 (a) With the written consent of the donor, the gov-
2 erning board may release, in whole or in part, a restric-
3 tion imposed by the applicable gift instrument on the
4 use or investment of an institutional fund.

5 (b) If written consent of the donor cannot be obtained
6 by reason of his death, disability, unavailability or im-
7 possibility of identification, the governing board may
8 apply in the name of the institution to the circuit court
9 of the county in which the institution is located for
10 release of a restriction imposed by the applicable gift
11 instrument on the use or investment of an institutional
12 fund. The attorney general shall be notified of the ap-
13 plication and shall be given an opportunity to be heard.
14 If the court finds that the restriction is obsolete, inap-
15 propriate or impracticable, it may by order release the
16 restriction in whole or in part. A release under this
17 subsection may not change an endowment fund to a fund
18 that is not an endowment fund.

19 (c) A release under this section may not allow a fund

20 to be used for purposes other than the educational,
21 religious, charitable or other eleemosynary purposes of
22 the institution affected.

23 (d) This section does not limit the application of the
24 doctrine of *cy pres*.

§44-6A-8. Uniformity of application; construction.

1 This article shall be so applied and construed as to
2 effectuate its general purpose to make uniform the law
3 with respect to the subject of this act among those states
4 which enact it.

CHAPTER 61

(H. B. 1351—By Mr. Tompkins and Mr. Shiflet)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, seven, twelve and sixteen, article four of said chapter; to amend and reenact section thirty-one, article six, chapter thirty-three of said code; and to further amend said article six by adding thereto a new section, designated section thirty-one-a, all relating to the motor vehicle safety responsibility law; requirements as to policy or bond; proof of financial responsibility; motor vehicle liability insurance; policy limits; uninsured motorist coverage; conditions of recovery; rights and liabilities of insurer; rates.

Be it enacted by the Legislature of West Virginia:

That section five, article three, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, seven, twelve and sixteen, article four of said chapter be amended and reenacted; that section thirty-one, article six, chapter thirty-three of said code be

amended and reenacted; and that said article six be further amended by adding thereto a new section, designated section thirty-one-a, all to read as follows:

Chapter

17D. Motor Vehicle Safety Responsibility Law.

33. Insurance.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Article

3. Security Following Accident.

4. Proof of Financial Responsibility for the Future.

ARTICLE 3. SECURITY FOLLOWING ACCIDENT.

§17D-3-5. Requirements as to policy or bond.

1 (a) No policy or bond shall be effective under section four
2 of this article unless issued by an insurance company or surety
3 company authorized to do business in this state, except as
4 provided in subsection (b) of this section, nor unless such
5 policy or bond is subject, if the accident has resulted in bodily
6 injury or death, to a limit, exclusive of interest and costs, of
7 not less than twenty thousand dollars because of bodily injury
8 to or death of one person in any one accident, and subject to
9 said limit for one person, to a limit of not less than forty
10 thousand dollars because of bodily injury to or death of two
11 or more persons in any one accident, and, if the accident has
12 resulted in injury to, or destruction of property, to a limit of
13 not less than ten thousand dollars because of injury to or
14 destruction of property of others in any one accident.

15 (b) No policy or bond shall be effective under section four
16 of this article with respect to any vehicle which was not
17 registered in this state or was a vehicle which was registered
18 elsewhere than in this state at the effective date of the policy
19 or bond or the most recent renewal thereof, unless the insur-
20 ance company or surety company issuing such policy or bond
21 is authorized to do business in this state, or if said company is
22 not authorized to do business in this state, unless it shall
23 execute a power of attorney authorizing the commissioner to

24 accept service on its behalf of notice or process in any action
25 upon such policy or bond arising out of such accident.

26 (c) Upon receipt of notice of such accident from the com-
27 missioner, the insurance company or surety company named in
28 such notice shall notify the commissioner in such manner as
29 he may require in case such a policy or bond was not in effect
30 at the time of such accident.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-2. "Proof of financial responsibility" construed.

§17D-4-7. Payment sufficient to satisfy requirements.

§17D-4-12. "Motor vehicle liability policy" defined; scope and provisions of policy.

§17D-4-16. Money or securities as proof.

§17D-4-2. "Proof of financial responsibility" construed.

1 The term "proof of financial responsibility" as used in this
2 chapter shall mean: Proof of ability to respond in damages for
3 liability, on account of accident occurring subsequent to the
4 effective date of said proof, arising out of the ownership, oper-
5 ation, maintenance or use of a motor vehicle, trailer or semi-
6 trailer in the amount of twenty thousand dollars because of
7 bodily injury to or death of one person in any one accident,
8 and, subject to said limit for one person, in the amount of
9 forty thousand dollars because of bodily injury to or death of
10 two or more persons in any one accident, and in the amount of
11 ten thousand dollars because of injury to or destruction of
12 property of others in any one accident.

§17D-4-7. Payment sufficient to satisfy requirements.

1 (a) Judgments herein referred to shall, for the purpose of
2 this chapter only, be deemed satisfied:

3 (1) When twenty thousand dollars has been credited upon
4 any judgment or judgments rendered in excess of that amount
5 because of bodily injury to or death of one person as the
6 result of any one accident; or

7 (2) When, subject to such limit of twenty thousand dollars
8 because of bodily injury to or death of one person, the sum of

9 forty thousand dollars has been credited upon any judgment
10 or judgments rendered in excess of that amount because of
11 bodily injury to or death of two or more persons as the result
12 of any one accident; or

13 (3) When ten thousand dollars has been credited upon any
14 judgment or judgments rendered in excess of that amount be-
15 cause of injury to or destruction of property of others as a
16 result of any one accident.

17 (b) Provided, however, that payments made in settlement
18 of any claims because of bodily injury, death or property
19 damage arising from such accident shall be credited in reduc-
20 tion of the amounts provided for in this section.

§17D-4-12. "Motor vehicle liability policy" defined; scope and provisions of policy.

1 (a) A "motor vehicle liability policy" as said term is used
2 in this chapter shall mean an "owner's policy" or an "operator's
3 policy" of liability insurance certified as provided in section
4 ten or section eleven of this article as proof of financial re-
5 sponsibility, and issued, except as otherwise provided in section
6 eleven, by an insurance carrier duly authorized to transact
7 business in this state, to or for the benefit of the person named
8 therein as insured.

9 (b) Such owner's policy of liability insurance:

10 (1) Shall designate by explicit description or by appropriate
11 reference all vehicles with respect to which coverage is thereby
12 to be granted; and

13 (2) Shall insure the person named therein and any other
14 person, as insured, using any such vehicle or vehicles with the
15 express or implied permission of such named insured, against
16 loss from the liability imposed by law for damages arising out
17 of the ownership, operation, maintenance or use of such
18 vehicle or vehicles within the United States of America or the
19 Dominion of Canada, subject to limits exclusive of interest and
20 costs, with respect to each such vehicle, as follows: Twenty
21 thousand dollars because of bodily injury to or death of one
22 person in any one accident and, subject to said limit for one

23 person, forty thousand dollars because of bodily injury to or
24 death of two or more persons in any one accident, and ten
25 thousand dollars because of injury to or destruction of prop-
26 erty of others in any one accident.

27 (c) Such operator's policy of liability insurance shall insure
28 the person named as insured therein against loss from the
29 liability imposed upon him by law for damages arising out of
30 the use by him of any motor vehicle not owned by him, within
31 the same territorial limits and subject to the same limits of
32 liability as are set forth above with respect to an owner's
33 policy of liability insurance.

34 (d) Such motor vehicle liability policy shall state the name
35 and address of the named insured, the coverage afforded by
36 the policy, the premium charged therefor, the policy period,
37 and the limits of liability, and shall contain an agreement or
38 be endorsed that insurance is provided thereunder in accor-
39 dance with the coverage defined in this chapter as respects
40 bodily injury and death or property damage, or both, and is
41 subject to all the provisions of this chapter.

42 (e) Such motor vehicle liability policy need not insure any
43 liability under any workmen's compensation law nor any
44 liability on account of bodily injury to or death of an employee
45 of the insured while engaged in the employment, other than
46 domestic, of the insured, or while engaged in the operation,
47 maintenance or repair of any such vehicle nor any liability
48 for damage to property owned by, rented to, in charge of, or
49 transported by the insured.

50 (f) Every motor vehicle liability policy shall be subject to
51 the following provisions which need not be contained therein:

52 (1) The liability of the insurance carrier with respect to the
53 insurance required by this chapter shall become absolute
54 whenever injury or damage covered by said motor vehicle lia-
55 bility policy occurs; said policy may not be canceled or annulled
56 as to such liability by an agreement between the insurance
57 carrier and the insured after the occurrence of the injury or
58 damage; no statement made by the insured or on his behalf
59 and no violation of said policy shall defeat or void said policy.

60 (2) The satisfaction by the insured of a judgment for such
61 injury or damage shall not be a condition precedent to the
62 right or duty of the insurance carrier to make payment on
63 account of such injury or damage.

64 (3) The insurance carrier shall have the right to settle any
65 claim covered by the policy, and if such settlement is made in
66 good faith, the amount thereof shall be deductible from the
67 limits of liability specified in subdivision two, subsection (b)
68 of this section.

69 (4) The policy, the written application therefor, if any, and
70 any rider or endorsement which does not conflict with the pro-
71 visions of this chapter shall constitute the entire contract be-
72 tween parties.

73 (g) Any policy which grants the coverage required for a
74 motor vehicle liability policy may also grant any lawful cover-
75 age in excess of or in addition to the coverage specified for a
76 motor vehicle liability policy and such excess or additional
77 coverage shall not be subject to the provisions of this chapter.
78 With respect to a policy which grants such excess or additional
79 coverage the term "motor vehicle liability policy" shall apply
80 only to that part of the coverage which is required by this
81 section.

82 (h) Any motor vehicle liability policy may provide that the
83 insured shall reimburse the insurance carrier for any payment
84 the insurance carrier would not have been obligated to make
85 under the terms of the policy except for the provisions of this
86 chapter.

87 (i) Any motor vehicle liability policy may provide for the
88 prorating of the insurance thereunder with other valid and col-
89 lectible insurance.

90 (j) The requirements for a motor vehicle liability policy
91 may be fulfilled by the policies of one or more insurance car-
92 riers which policies together meet such requirements.

93 (k) Any binder issued pending the issuance of a motor
94 vehicle policy shall be deemed to fulfill the requirements for
95 such a policy.

§17D-4-16. Money or securities as proof.

1 (a) Proof of financial responsibility may be evidenced by
2 the certificate of the state treasurer that the person named
3 therein has deposited with him forty thousand dollars in cash,
4 or securities such as may legally be purchased by savings banks
5 or for trust funds of a market value of forty thousand dollars.
6 The state treasurer shall not accept any such deposit and issue
7 a certificate therefor and the commissioner shall not accept
8 such certificate unless accompanied by evidence that there are
9 no unsatisfied judgments of any character against the deposi-
10 tor in the county where the depositor resides.

11 (b) Such deposit shall be held by the state treasurer to
12 satisfy, in accordance with the provisions of this chapter, any
13 execution on a judgment issued against such person making the
14 deposit, for damages, including damages for care and loss of
15 services, because of bodily injury to or death of any person,
16 or for damages because of injury to or destruction of property,
17 including the loss of use thereof, resulting from the ownership,
18 maintenance, use or operation of a motor vehicle, trailer or
19 semitrailer after such deposit was made.

CHAPTER 33. INSURANCE.**ARTICLE 6. THE INSURANCE POLICY.**

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

§33-6-31a. Rates charged for uninsured motorist coverage.

§33-6-31. Motor vehicle policy to include an omnibus clause and uninsured motorists coverage; conditions for recovery under endorsement; rights and liabilities of insurer.

1 (a) No policy or contract of bodily injury liability insur-
2 ance, or of property damage liability insurance, covering
3 liability arising from the ownership, maintenance or use
4 of any motor vehicle, shall be issued or delivered in this
5 state to the owner of such vehicle, or shall be issued or
6 delivered by any insurer licensed in this state upon any
7 motor vehicle for which a certificate of title has been issued
8 by the department of motor vehicles of this state, unless it

9 shall contain a provision insuring the named insured and
10 any other person, except a bailee for hire and any persons
11 specifically excluded by any restrictive endorsement attached
12 to the policy, responsible for the use of or using the motor
13 vehicle with the consent, expressed or implied, of the named
14 insured or his spouse against liability for death or bodily
15 injury sustained, or loss or damage occasioned within the
16 coverage of the policy or contract as a result of negligence
17 in the operation or use of such vehicle by the named insured
18 or by such person: *Provided*, That in any such automobile
19 liability insurance policy or contract, or endorsement thereto,
20 if coverage resulting from the use of a nonowned automomobile
21 is conditioned upon the consent of the owner of such
22 motor vehicle, the word "owner" shall be construed to
23 include the custodian of such nonowned motor vehicles.

24 (b) Nor shall any such policy or contract be so issued
25 or delivered unless it shall contain an endorsement or
26 provisions undertaking to pay the insured all sums which he
27 shall be legally entitled to recover as damages from the
28 owner or operator of an uninsured motor vehicle, within
29 limits which shall be no less than the requirements of section
30 two, article four, chapter seventeen-d of the code of
31 West Virginia, as amended from time to time: *Provided*,
32 That such policy or contract shall provide an option to the
33 insured with appropriately adjusted premiums to pay the insured
34 all sums which he shall be legally entitled to recover
35 as damages from the owner or operator of an uninsured motor
36 vehicle up to an amount of one hundred thousand dollars because
37 of bodily injury to or death of one person in any one
38 accident, and, subject to said limit for one person, in the
39 amount of three hundred thousand dollars because of bodily
40 injury to or death of two or more persons in any one accident,
41 and in the amount of fifty thousand dollars because of injury
42 to or destruction of property of others in any one accident:
43 *Provided, however*, That such endorsement or provisions may
44 exclude the first three hundred dollars of property damage
45 resulting from the negligence of an uninsured motorist.

46 (c) As used in this section, the term "bodily injury" shall
47 include death resulting therefrom, and the term "named in-

48 sured" shall mean the person named as such in the declara-
49 tions of the policy or contract and shall also include such per-
50 son's spouse if a resident of the same household, and the term
51 "insured" shall mean the named insured, and, while resident
52 of the same household, the spouse of any such named insured,
53 and relatives of either, while in a motor vehicle or otherwise,
54 and any person, except a bailee for hire, who uses, with the
55 consent, expressed or implied, of the named insured, the motor
56 vehicle to which the policy applies or the personal represen-
57 tative of any of the above; and the term "uninsured motor
58 vehicle" shall mean a motor vehicle as to which there is no
59 (i) bodily injury liability insurance and property damage lia-
60 bility insurance both in the amounts specified by section two,
61 article four, chapter seventeen-d, as amended from time to
62 time, or (ii) there is such insurance, but the insurance com-
63 pany writing the same denies coverage thereunder, or (iii) there
64 is no certificate of self-insurance issued in accordance with the
65 provision of section two, article six, chapter seventeen-d of the
66 code of West Virginia. A motor vehicle shall be deemed to be
67 uninsured if the owner or operator thereof be unknown:
68 *Provided*, That recovery under the endorsement or provisions
69 shall be subject to the conditions hereinafter set forth.

70 (d) Any insured intending to rely on the coverage required
71 by subsection (b) of this section shall, if any action be insti-
72 tuted against the owner or operator of an uninsured motor
73 vehicle, cause a copy of the summons and a copy of the com-
74 plaint to be served upon the insurance company issuing the
75 policy, in the manner prescribed by law, as though such in-
76 surance company were a named party defendant; such com-
77 pany shall thereafter have the right to file pleadings and to
78 take other action allowable by law in the name of the owner,
79 or operator, or both, of the uninsured motor vehicle or in its
80 own name.

81 Nothing in this subsection shall prevent such owner or
82 operator from employing counsel of its own choice and taking
83 any action in his own interest in connection with such pro-
84 ceeding.

85 (e) If the owner or operator of any motor vehicle which
86 causes bodily injury or property damage to the insured be

87 unknown, the insured, or someone in his behalf, in order for
88 the insured to recover under the uninsured motorist endorse-
89 ment or provision, shall:

90 (i) Within twenty-four hours after the insured discover, and
91 being physically able to report the occurrence of such accident,
92 the insured, or someone in his behalf, shall report the acci-
93 dent to a police, peace or judicial officer, or to the commis-
94 sioner of motor vehicles, unless the accident shall already have
95 been investigated by a police officer; and

96 (ii) Notify the insurance company, within sixty days after
97 such accident, that the insured or his legal representative has
98 a cause or causes of action arising out of such accident for
99 damages against a person or persons whose identity is unknown
100 and setting forth the facts in support thereof; and, upon writ-
101 ten request of the insurance company communicated to the in-
102 sured not later than five days after receipt of such statement,
103 shall make available for inspection the motor vehicle which
104 the insured was occupying at the time of the accident; and

105 (iii) Upon trial establish that the motor vehicle, which
106 caused the bodily injury or property damage, whose operator
107 is unknown, was a "hit and run" motor vehicle, meaning a
108 motor vehicle which causes damage to the property of the in-
109 sured arising out of physical contact of such motor vehicle
110 therewith, or which causes bodily injury to the insured arising
111 out of physical contact of such motor vehicle with the insured
112 or with a motor vehicle which the insured was occupying at the
113 time of the accident. If the owner or operator of any motor
114 vehicle causing bodily injury or property damage be unknown,
115 an action may be instituted against the unknown defendant as
116 "John Doe," in the county in which the accident took place or
117 in any other county in which such action would be proper
118 under the provisions of article one, chapter fifty-six of this
119 code; service of process may be made by delivery of a copy of
120 the complaint and summons or other pleadings to the clerk of
121 the court in which the action is brought, and service upon
122 the insurance company issuing the policy shall be made as
123 prescribed by law as though such insurance company were a
124 party defendant. The insurance company shall have the right

125 to file pleadings and take other action allowable by law in the
126 name of John Doe.

127 (f) An insurer paying a claim under the endorsement or
128 provisions required by subsection (b) of this section shall be
129 subrogated to the rights of the insured to whom such claim
130 was paid against the person causing such injury, death or dam-
131 age to the extent that payment was made. The bringing of an
132 action against the unknown owner or operator as John Doe
133 or the conclusion of such an action shall not constitute a bar
134 to the insured, if the identity of the owner or operator who
135 caused the injury or damages complained of, becomes known,
136 from bringing an action against the owner or operator there-
137 tofore proceeded against as John Doe. Any recovery against
138 such owner or operator shall be paid to the insurance company
139 to the extent that such insurance company shall have paid the
140 insured in the action brought against such owner or operator
141 as John Doe, except that such insurance company shall pay its
142 proportionate part of any reasonable costs and expenses in-
143 curred in connection therewith, including reasonable attorney's
144 fees. Nothing in an endorsement or provision made under this
145 subsection, nor any other provision of law, shall operate to
146 prevent the joining, in an action against John Doe, of the owner
147 or operator of the motor vehicle causing injury as a party de-
148 fendant, and such joinder is hereby specifically authorized.

149 (g) No such endorsement or provisions shall contain any
150 provision requiring arbitration of any claim arising under any
151 such endorsement or provision, nor may anything be required
152 of the insured except the establishment of legal liability, nor
153 shall the insured be restricted or prevented in any manner
154 from employing legal counsel or instituting legal proceedings.

155 (h) The provisions of subsections (a) and (b) of this section
156 shall not apply to any policy of insurance to the extent that it
157 covers the liability of an employer to his employees under any
158 workmen's compensation law.

159 (i) The commissioner of insurance shall formulate and re-
160 quire the use of standard policy provisions for the insurance
161 required by this section, but use of such standard policy pro-

162 visions may be waived by the commissioner in the circum-
163 stances set forth in section ten of this article.

164 (j) A motor vehicle shall be deemed to be uninsured within
165 the meaning of this section, if there has been a valid bodily
166 injury or property damage liability policy issued upon such
167 vehicle, but which policy is uncollectible in whole or in part,
168 by reason of the insurance company issuing such policy upon
169 such vehicle being insolvent or having been placed in receiv-
170 ership. The right of subrogation granted insurers under the
171 provisions of subsection (f) of this section shall not apply as
172 against any person or persons who is or becomes an uninsured
173 motorist for the reasons set forth in this subsection.

174 (k) Nothing contained herein shall prevent any insurer
175 from also offering benefits and limits other than those pre-
176 scribed herein, nor shall this section be construed as pre-
177 venting any insurer from incorporating in such terms, condi-
178 tions and exclusions as may be consistent with the premium
179 charged.

§33-6-31a. Rates charged for uninsured motorist coverage.

1 Rates charged by insurers for the minimum uninsured
2 motorist coverage required under the provisions of section
3 thirty-one, of this article, shall be separate from the rates
4 charged by an insurer for the optional limits afforded the
5 policyholder under said section.

CHAPTER 62

(S. B. 408—By Mr. Rogers)

[Passed March 8, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three 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 nine-a, all relating to allowing a

domestic insurer to be examined; requiring a foreign insurance company which is examined be charged for the costs of the examinations; providing that compensation of employees of the department of insurance shall be at a rate set by the commissioner, and that compensation of other personnel be at a rate approved by the commissioner; providing a credit for a domestic insurance company against its premium tax in the amount of the cost of its examination; definition of insurance company.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter thirty-three 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 nine-a, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-9a. Premium tax credit.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

1 (a) The commissioner or his accredited examiners
2 shall, at such times as he deems necessary, but at least
3 once each three years, visit each domestic insurer and
4 thoroughly examine its financial condition and methods
5 of doing business and ascertain whether it has complied
6 with all the laws and regulations of this state. The com-
7 missioner at such times as he deems necessary may
8 cause an examination to be conducted of any foreign or
9 alien insurer licensed to transact insurance in this state;
10 personnel conducting an examination of either a domestic
11 or foreign insurer shall be compensated for each day
12 worked at a rate set by the commissioner. Such personnel
13 shall also be reimbursed for their travel and living ex-
14 penses at the rate set by the commissioner. Personnel
15 who are appointed by the commissioner, but are not
16 employees of the department of insurance, shall be com-
17 pensated for their work and travel and living expenses
18 at rates approved by the commissioner, or as other-

19 wise provided by law. If the laws of another state
20 require or permit the insurance department or other
21 authority thereof to make examinations of insurance
22 companies of this state at the expense of such companies,
23 the expenses of the commissioner in making an examina-
24 tion of an insurance company of such other state shall be
25 charged to and collected from such company in the man-
26 ner prescribed by the commissioner. The commissioner
27 shall provide each company with an itemized statement
28 of the expenses incurred in conducting the examination
29 and shall certify a copy of such statement to the trea-
30 surer of the state. Upon receipt of the commissioner's
31 statement, the company shall remit the amount thereof
32 to the commissioner who shall remit that amount to the
33 treasurer of the state for deposit in the general fund of
34 the state of West Virginia. As used in this section "ex-
35 penses" means: (1) The entire compensation for each
36 day worked by all personnel, including those who are
37 not employees of the department of insurance, the con-
38 duct of such examination calculated as hereinbefore pro-
39 vided; (2) travel and living expenses of all personnel,
40 including those who are not employees of the department
41 of insurance, directly engaged in the conduct of such
42 examination, calculated at the rates as hereinbefore pro-
43 vided for; (3) all other incidental expenses incurred by
44 or on behalf of such personnel in the conduct of such
45 authorized examination. The commissioner shall make
46 a full written report of each such examination of an
47 insurer, certified to by the commissioner or the examiner
48 in charge of such examination. The commissioner shall
49 furnish a copy of the report to the insurer examined not
50 less than ten days prior to filing the same in his office.
51 If such insurer so requests in writing, within such ten-
52 day period, the commissioner shall consider the objec-
53 tions of such insurer to the report as proposed, and shall
54 not so file the report until after such modifications, if
55 any, have been made therein as the commissioner deems
56 proper. The report, when filed, shall be admissible in
57 evidence in any action or proceeding brought by the
58 commissioner against the insurer examined, or its offi-
59 cers or agents, and shall be prima facie evidence of the

60 facts stated therein. The commissioner or his examiners
61 may at any time testify and offer proper evidence as to
62 information secured during the course of an examina-
63 tion, whether or not a written report of the examination
64 has at that time been either made, served or filed in the
65 commissioner's office. The examination of an alien in-
66 surer shall be limited to its United States business. In
67 lieu of making his own examination, the commissioner
68 may accept a full report of the last recent examination
69 of a foreign or alien insurer, certified to by the insurance
70 supervisory official of the state of domicile of a foreign
71 insurer or the state of entry into the United States of an
72 insurer.

73 (b) The commissioner may also cause to be examined
74 at such times as he deems necessary the books, records,
75 papers, documents, correspondence and methods of doing
76 business of any agent, broker or solicitor licensed by this
77 state.

78 (c) For such purposes the commissioner, his deputies
79 and employees shall have free access to all books, records,
80 papers, documents and correspondence of all such in-
81 surers (whether domestic, foreign or alien), agents,
82 brokers and solicitors wherever such books, records,
83 papers, documents and records are situate.

84 (d) The commissioner may revoke the license of any
85 such insurer, agent, broker or solicitor who refuses to
86 submit to such examination.

87 (e) The commissioner may withhold from public in-
88 spection any examination or investigation report for such
89 time as he may deem prudent, but no such report shall
90 be withheld from public inspection for longer than ninety
91 days after the same has been filed.

§33-2-9a. Premium tax credit.

1 Any insurance company which qualifies for a credit
2 against the premium tax levied by section fourteen-
3 a, article three of this chapter shall be allowed an ad-
4 ditional credit against such premium tax for the cost of
5 any examination incurred pursuant to the previous sec-

6 tion. Such credit for the cost of the examination shall
7 be taken during the taxable year immediately following
8 payment for the cost of examination unless the commis-
9 sioner orders a pro rata credit over a period not to exceed
10 five taxable years. For purposes of this section, "insur-
11 ance company" includes any domestic or foreign stock
12 company, mutual company, mutual protective association,
13 farmers mutual fire companies, fraternal benefit society,
14 reciprocal or inter-insurance exchange, nonprofit medical
15 care corporation, nonprofit health care corporation, non-
16 profit hospital service association, and nonprofit dental
17 care corporation, regardless of the type of coverage writ-
18 ten, benefits provided or guarantees made by each.

CHAPTER 63

(H. B. 1542—By Mr. Karras)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to automobile liability insurance policies and the effect of nonrenewal 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; reasons for nonrenewal; hearing and review after nonrenewal.

1 No insurer shall fail to renew an outstanding automobile
2 liability insurance policy unless such nonrenewal is preceded

3 by at least forty-five days of advance notice to the named
4 insured of such insurer's election not to renew such policy:
5 *Provided*, That subject to this section, nothing contained in this
6 article shall be construed so as to prevent an insurer from
7 refusing to issue an automobile liability policy upon applica-
8 tion to such insurer, nor shall any provision of this article be
9 construed to prevent an insurer from refusing to renew such
10 a policy upon expiration, except as to the notice requirements
11 of this section, and except further as to those applicants law-
12 fully submitted pursuant to the West Virginia assigned risk
13 plan: *Provided, however*, That an insurer may not fail to re-
14 new an outstanding automobile liability insurance policy
15 which has been in existence for two consecutive years or long-
16 er except for the following reasons:

17 (a) The named insured fails to discharge when due any of
18 his obligations in connection with the payment of premium
19 for such policy or any installment thereof;

20 (b) The policy was obtained through material misrepresen-
21 tation;

22 (c) The insured violates any of the material terms and
23 conditions of the policy;

24 (d) The named insured or any other operator, either resi-
25 dent in the same household or who customarily operates an
26 automobile insured under such policy:

27 (1) Has had his operator's license suspended or revoked
28 during the policy period; or

29 (2) Is or becomes subject to epilepsy or heart attacks, and
30 such individual cannot produce a certificate from a physician
31 testifying to his ability to operate a motor vehicle;

32 (e) The named insured or any other operator, either resi-
33 dent in the same household or who customarily operates an
34 automobile insured under such policy is convicted of or for-
35 feits bail during the policy period for any of the following:

36 (1) Any felony or assault involving the use of a motor
37 vehicle;

38 (2) Negligent homicide arising out of the operation of a
39 motor vehicle;

40 (3) Operating a motor vehicle while under the influence of
41 intoxicating liquor or of any narcotic drug;

42 (4) Leaving the scene of a motor vehicle accident in which
43 the insured is involved without reporting as required by law;

44 (5) Theft of a motor vehicle or the unlawful taking of a
45 motor vehicle;

46 (6) Making false statements in an application for a motor
47 vehicle operator's license;

48 (7) A second violation, committed within a period of twelve
49 months, of any moving traffic violation which constitutes a
50 misdemeanor, whether or not the violations were repetitions
51 of the same offense or were different offenses;

52 (f) The named insured or any other operator has had a
53 second at-fault motor vehicle accident within a period of
54 twelve months.

55 Nonrenewal of such policy for any reason is subject to
56 hearing and review as provided in section five of this article.
57 Cost of the hearing shall be assessed against the losing party
58 but shall not exceed seventy-five dollars.

CHAPTER 64

(H. B. 854—By Mr. Wright)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; group life insurance; debtor groups; and increasing the amount of insurance permitted on the life of a debtor from ten thousand dollars to twenty thousand dollars.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, 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 14. GROUP LIFE INSURANCE.

§33-14-3. Debtor groups.

1 The lives of a group of individuals may be insured under
2 a policy issued to a creditor, who shall be deemed the policy-
3 holder, to insure debtors of the creditor, subject to the follow-
4 ing requirements:

5 (a) The debtors eligible for insurance under the policy
6 shall be all of the debtors of the creditor whose indebtedness
7 is repayable either (i) in installments, or (ii) in one sum
8 at the end of a period not in excess of eighteen months from
9 the initial date of debt, or all of any class or classes thereof
10 determined by conditions pertaining to the indebtedness or to
11 the purchase giving rise to the indebtedness. The policy may
12 provide that the term "debtors" shall include the debtors of
13 one or more subsidiary corporations, and the debtors of one
14 or more affiliated corporations, proprietors or partnerships
15 if the business of the policyholder and of such affiliated
16 corporations, proprietors or partnerships is under common
17 control through stock ownership, contract or otherwise. No
18 debtor shall be eligible unless the indebtedness constitutes
19 an obligation to repay which is binding upon him during his
20 lifetime, at and from the date the insurance becomes effective
21 upon his life.

22 (b) The premium for the policy shall be paid by the
23 policyholder, either from the creditor's funds, or from charges
24 collected from the insured debtors, or from both. A policy
25 on which part or all of the premium is to be derived from
26 the collection from the insured debtors of identifiable charges
27 not required of uninsured debtors shall not include, in the
28 class or classes of debtors eligible for insurance, debtors
29 under obligations outstanding at its date of issue without
30 evidence of individual insurability unless at least seventy-five
31 percent of the then eligible debtors elect to pay the required
32 charges. A policy on which no part of the premium is to be

33 derived from the collection of such identifiable charges must
34 insure all eligible debtors, or all except any as to whom
35 evidence of individual insurability is not satisfactory to the
36 insurer.

37 (c) The policy may be issued only if the group of eligible
38 debtors is then receiving new entrants at the rate of at least
39 one hundred persons yearly, or may reasonably be expected
40 to receive at least one hundred new entrants during the first
41 policy year, and only if the policy reserves to the insurer the
42 right to require evidence of individual insurability if less than
43 seventy-five percent of the new entrants become insured.
44 The policy may exclude from the classes eligible for insurance
45 classes of debtors determined by age.

46 (d) The amount of insurance on the life of any debtor
47 shall at no time exceed the amount owed by him which is
48 repayable in installments to the creditor, or twenty thousand
49 dollars, whichever is less. Where the indebtedness is repayable
50 in one sum to the creditor, the insurance on the life of any
51 debtor shall in no instance be in effect for a period in excess
52 of eighteen months except that such insurance may be con-
53 tinued for an additional period not exceeding six months in
54 the case of default, extension or recasting of the loan. The
55 amount of the insurance on the life of any debtor shall at
56 no time exceed the amount of the unpaid indebtedness, or
57 twenty thousand dollars, whichever is less.

58 (e) The insurance shall be payable to the policyholder.
59 Such payment shall reduce or extinguish the unpaid indebted-
60 ness of the debtor to the extent of such payment.

CHAPTER 65

(Com. Sub. for S. B. 559—By Mr. Rogers)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, ten and twelve, article one, chapter twelve of the code of West

Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three and four, article two of said chapter; to amend and reenact section one, article three of said chapter; and to amend and reenact sections two, nine, eleven and thirteen, article six of said chapter, all relating to the investment of state funds; depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by the treasurer; depositories for interest earning deposits; qualifications; accounts of depositories; settlements with depositories; reports showing depository balances; reconciliation of reports; when the treasurer may make funds available to the board of investments; record of receipts; regulations governing deposits; credit to state funds; exceptions; deposit by treasurer; duty of depositories; payment from treasury; checks; definitions; permissible investments; apportionment of interest bearing deposits among state depositories; interest rates on such deposits.

Be it enacted by the Legislature of West Virginia:

That sections two, three, ten and twelve, article one, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two, three and four, article two of said chapter be amended and reenacted; that section one, article three of said chapter be amended and reenacted; and that sections two, nine, eleven and thirteen, article six of said chapter be amended and reenacted, all to read as follows:

Article

1. **State Depositories.**
2. **Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.**
3. **Appropriations and Expenditures.**
6. **West Virginia State Board of Investments.**

ARTICLE 1. STATE DEPOSITORIES.

- §12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.
- §12-1-3. Depositories for interest earning deposits; qualifications.

§12-1-10. Treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

§12-1-12. When treasurer may make funds available to the board of investments; depositories outside the state.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.

1 The state board of investments shall designate the
2 state and national banks in this state which shall serve
3 as depositories for all state funds placed in demand
4 deposits. Any such state or national bank shall, upon
5 request to such board, be designated as a state depository
6 for such deposits, if such bank meets the requirements
7 set forth in this chapter: *Provided*, That notwithstanding
8 any provision of this article to the contrary, no state
9 funds may be deposited in any bank which has been in
10 existence over a period of five years which does not have
11 a loan to deposit ratio of fifty percent or more and twenty-
12 five percent of its loans shall be in farm, single or multi-
13 family residential units. For the purpose of making the
14 foregoing calculation, the balances due the bank on the
15 following loans shall be given effect: (1) qualifying
16 residential loans held by the bank; (2) qualifying loans
17 made in participation with other financial institutions;
18 (3) qualifying loans made in participation with agencies
19 of the state, federal, or local governments; and (4)
20 qualifying loans originated and serviced by the bank
21 but owned by an out-of-state investor. The calculation of
22 the percent of total loans made by a bank in farm, single
23 or multi-family residential units shall be made from the
24 average daily balance of total loans and qualifying resi-
25 dential loans for the period being reported.

26 Demand deposit accounts shall consist of receipt, dis-
27 bursement and investment accounts. Receipt accounts
28 shall be those accounts in which are deposited moneys
29 belonging to or due the state of West Virginia or any
30 official, department, board, commission or agency, there-
31 of.

32 Disbursement accounts shall be those accounts from
33 which are paid moneys due from the state of West
34 Virginia or any official, department, board, commission,
35 political subdivision or agency thereof to any political
36 subdivision, person, firm or corporation except moneys
37 paid from investment accounts.

38 Investment accounts shall be those accounts estab-
39 lished by the treasurer or board of investments for the
40 buying and selling of securities for investment for the
41 state of West Virginia or any official, department, board,
42 commission or agency thereof or to meet obligations to
43 paying agents or for paying charges incurred for the
44 custody, safekeeping and management of such securities
45 pursuant to the provisions of section five, article five of
46 this chapter, or for paying the charges of any bank or
47 trust company acting as paying agent or copaying agent
48 for a bond issue of the state pursuant to the provisions
49 of section seven-a, article one, chapter fifty-seven of this
50 code.

51 The board of investments shall promulgate rules and
52 regulations, in accordance with the provisions of chapter
53 twenty-nine-a of the code of West Virginia, as amended,
54 concerning depositories for receipt accounts and invest-
55 ment accounts prescribing the selection criteria, proce-
56 dures, compensation and such other contractual terms as
57 it considers to be in the best interests of the state giving
58 due consideration to: (1) The activity of the various ac-
59 counts maintained therein; (2) the reasonable value of
60 the banking services rendered or to be rendered the state
61 by such depositories; and (3) the value and importance of
62 such deposits to the economy of the communities and the
63 various areas of the state affected thereby.

64 The board of investments shall select depositories for
65 disbursement accounts through competitive bidding by
66 eligible banks in this state: *Provided, however,* That
67 funds in disbursement accounts shall be proportionately
68 distributed among the following categories of such de-
69 positories, based upon the total assets of such depository:
70 (a) Depositories whose total assets are not greater than

71 twenty-five million dollars; (b) depositories whose total
72 assets are greater than twenty-five million dollars but
73 not greater than fifty million dollars; or (c) depositories
74 whose total assets are greater than fifty million dollars.
75 The board shall promulgate rules and regulations, in ac-
76 cordance with the provisions of chapter twenty-nine-a of
77 the code of West Virginia, as amended, prescribing the
78 procedures and criteria for such bidding and selection. It
79 shall, in its invitations for bids, specify the approximate
80 amounts of deposits, the duration of contracts to be
81 awarded and such other contractual terms as it considers
82 to be in the best interests of the state, consistent with
83 obtaining the most efficient service at the lowest cost:
84 *Provided, further,* That the depositories for such disburse-
85 ment accounts shall be determined by the board through
86 competitive bidding separately for each category of de-
87 positories created in this section.

88 The amount of money needed for current operation
89 purposes of the state government, as determined by the
90 state treasurer, shall be maintained at all times in the
91 state treasury, in cash or in disbursement accounts with
92 banks designated as depositories in accordance with the
93 provisions of this section. No state officer or employee
94 shall make or cause to be made any deposits of state
95 funds in banks not so designated.

**§12-1-3. Depositories for interest earning deposits; qualifica-
tions.**

1 Any state or national bank or any state or federal
2 savings and loan association in this state shall, upon re-
3 quest made to the board of investments, be designated
4 as an eligible depository for interest earning deposits of
5 state funds if such bank or state or federal savings and
6 loan association meets the requirements set forth in
7 this chapter. For purposes of this article, the term "in-
8 terest earning deposits" includes certificates of deposit.
9 The board of investments, acting through the treasurer,
10 shall make and apportion such interest earning deposits
11 and shall prescribe the interest rates, terms and condi-
12 tions of such deposits, all in accordance with the provi-

13 sions of article six of this chapter: *Provided*, That state
14 or federal savings and loan associations insured by an
15 agency of the federal government shall be eligible for
16 such deposits not in excess of one hundred thousand
17 dollars: *Provided, however*, That notwithstanding any
18 provision of this article to the contrary, no such interest
19 earning deposits may be deposited in any depository
20 which has been in existence over a period of five years
21 which does not have a loan to deposit ratio of fifty percent
22 or more and twenty-five percent of its loans shall be in
23 farm, single or multi-family residential units. For the
24 purpose of making the foregoing calculation, the balances
25 due the depository on the following loans shall be given
26 effect: (1) Qualifying residential loans held by the deposi-
27 tory; (2) qualifying loans made in participation with oth-
28 er financial institutions; (3) qualifying loans made in
29 participation with agencies of the state, federal or local
30 governments; and (4) qualifying loans originated and
31 serviced by the depository but owned by an out-of-state
32 investor. The calculation of the percent of total loans
33 made by a depository in farm, single or multi-family resi-
34 dential units shall be made from the average daily balance
35 of total loans and qualifying residential loans for the
36 period being reported.

**§12-1-10. Treasurer to keep accounts with depositories; settle-
ments with depositories; statements of depository
balances; reconciliation of statements and records.**

1 The treasurer shall keep in his office a record showing
2 the account of each depository, under which account entry
3 shall be made showing the amount and date of each de-
4 posit, the amount and date of each withdrawal, and the
5 balance on deposit. He shall cause his account with each
6 depository to be settled at the end of every quarter of the
7 year and the balance in such depository to the credit of
8 the treasury to be carried forward to the account of the
9 next quarter.

10 The treasurer shall furnish the board of investments
11 and the president and minority leader of the Senate and
12 the speaker and minority leader of the House of Delegates,

13 not later than the tenth day of each month, a statement
14 showing the average daily balances of the preceding
15 month in each state depository, and keep available for
16 their inspection in the treasurer's office a record of the
17 daily balances for each day on the last day of the pre-
18 ceding month in each such depository: *Provided*, That all
19 such statements and records shall be reconciled within
20 ninety days and the reconciled reports showing the aver-
21 age daily balances of each month shall be distributed
22 as prescribed above and the reconciled records of the
23 daily balance for each day of each month shall be kept
24 in the treasurer's office for a period of five years.

**§12-1-12. When treasurer may make funds available to the
board of investments; depositories outside the
state.**

1 When the funds in the treasury exceed the amount
2 needed for current operational purposes as determined by
3 the treasurer, he may make all or part of such excess
4 available for investment by the board of investments,
5 which shall invest the same for the benefit of the general
6 revenue fund.

7 Whenever the funds in the treasury exceed the amount
8 for which depositories within the state have qualified, or
9 the depositories within the state which have qualified are
10 unwilling to receive larger deposits, the board of invest-
11 ments may designate depositories outside the state, dis-
12 bursement accounts being bid for in the same manner as
13 required by depositories within the state, and when such
14 depositories outside the state have qualified by giving the
15 bond prescribed in section four of this article, the state
16 treasurer shall deposit funds therein in like manner as
17 funds are deposited in depositories within the state under
18 this article.

19 The treasurer may transfer funds to banks outside the
20 state for investment purposes or to meet obligations to
21 paying agents outside the state and any such transfer must
22 meet the same bond requirements as set forth in this
23 article.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

- §12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.
- §12-2-3. Deposit of moneys by treasurer.
- §12-2-4. Duty of depositories.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 All officials and employees of the state authorized
2 by statute to accept moneys due the state of West
3 Virginia shall keep a daily itemized record of such
4 moneys so received for deposit in the state treasury
5 and shall deposit promptly with the state treasurer all
6 moneys received or collected by them for or on behalf
7 of the state for any purpose whatsoever. The treasurer
8 shall promulgate rules and regulations, in accordance with
9 the provisions of chapter twenty-nine-a of the code of
10 West Virginia, as amended, governing the procedure for
11 such deposits. When so paid, such moneys shall be cred-
12 ited to the state fund and treated by the auditor and trea-
13 surer as part of the general revenue of the state, and shall
14 not be used for any purpose whatsoever unless and until
15 authorized and directed by the Legislature, except the
16 following funds:

17 (a) All moneys received out of appropriations made
18 by the Congress of the United States;

19 (b) All funds derived from the sale of farm and
20 dairy products from farms operated by any agency of
21 state government other than the farm management
22 commission;

23 (c) All endowment funds, bequests, donations, exe-
24 cutive emergency funds, and death and disability funds;

25 (d) All fees and funds collected at state educational
26 institutions for student activities;

27 (e) All funds derived from collections from dormi-
28 tories, boardinghouses, cafeterias and road camps;

29 (f) All moneys received from counties by institu-
30 tions for the deaf and blind on account of clothing for
31 indigent pupils;

32 (g) All insurance collected on account of losses by
33 fire and refunds;

34 (h) All funds derived from bookstores and sales of
35 blank paper and stationery; and collections by the chief
36 inspector of public offices;

37 (i) All moneys collected and belonging to the capitol
38 building fund, state road fund, state road sinking funds,
39 general school fund, school fund, state fund (moneys
40 belonging to counties, districts and municipalities), state
41 interest and sinking funds, state compensation funds,
42 the fund maintained by the public service commission
43 for the investigation and supervision of applications and
44 licenses under article nine, chapter thirty-one of this
45 code, and all funds and moneys payable to or received
46 by the natural resources commission of West Vir-
47 ginia;

48 (j) All moneys collected or received under any act
49 of the Legislature providing that funds collected or
50 received thereunder shall be used for specific purposes.

51 All moneys, excepted as aforesaid, shall be paid into
52 the state treasury in the same manner as collections
53 not so excepted, and shall be carried in separate ac-
54 counts to be used and expended only for the purposes
55 for which the same are authorized to be collected by
56 law. The gross amount collected in all cases shall be
57 paid into the state treasury, and commissions, costs and
58 expenses of collection authorized by general law to be
59 paid out of the gross collection are hereby authorized
60 to be paid out of the moneys collected and paid into
61 the state treasury in the same manner as other pay-
62 ments are made from the state treasury.

63 The official or employee making such deposits in the
64 state treasury shall prepare such deposit lists in such
65 manner and upon such report forms as may be pre-
66 scribed by the treasurer. The original of this report

67 shall accompany the deposit to the treasurer's office.
68 Certified or receipted copies shall be immediately for-
69 warded by the state treasurer to the state auditor and
70 to the commissioner of finance and administration, and
71 a copy shall be kept by the official or employee making
72 the report and shall become a part of his permanent
73 record.

§12-2-3. Deposit of moneys by treasurer.

1 The treasurer shall promptly transmit or cause to be
2 transmitted such deposits, together with a certificate of
3 deposit, as soon as practicable to the depository in which
4 he desires to make the deposit, and shall retain and
5 record the deposit lists.

§12-2-4. Duty of depositories.

1 Immediately upon the receipt of such deposit, it shall
2 be the duty of the depository to credit the state trea-
3 surer with the amount of the deposit, to date and sign
4 the certificate of deposit by some legally constituted offi-
5 cial of the depository and promptly transmit such cer-
6 tificate to the state treasurer.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-1. Manner of payment from treasury; form of checks.

1 Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a
3 warrant for same. The auditor shall thereupon examine
4 the claim, and the vouchers, certificates and evidence, if
5 any, offered in support thereof, and for so much thereof as
6 he shall find to be justly due from the state, if payment
7 thereof be authorized by law, and if there be an appro-
8 priation not exhausted or expired out of which it is
9 properly payable, he shall issue his warrant on the
10 treasurer, specifying to whom and on what account the
11 money mentioned therein is to be paid, and to what
12 appropriation the same is to be charged. On the presenta-
13 tion of such warrant to the treasurer, he shall ascertain
14 whether the same has been drawn in pursuance of an
15 appropriation made by law, and if he finds it to be so, he
16 shall in that case, but not otherwise, endorse his check

17 upon such warrant, directed to some depository, which
18 check shall be payable to the order of the person who is
19 to receive the money therein specified; or he may issue a
20 bank wire in payment of such warrant. If such check shall
21 not be presented for payment within six months after it
22 is drawn, it shall then be the duty of the treasurer to
23 credit it to the depository on which it was drawn, to
24 credit the state fund with the amount, and immediately
25 notify the auditor to make corresponding entries on his
26 books. No state depository shall pay a check unless it is
27 presented within six months after it is drawn and every
28 check shall bear upon its face the words, "Void, unless
29 presented for payment within six months." All claims
30 required by law to be allowed by any court, and payable
31 out of the state treasury, shall have the seal of the court
32 allowing or authorizing the payment of the same affixed
33 by the clerk of such court to his certificate of its allow-
34 ance; and no such claim shall be audited and paid by the
35 auditor unless the seal of such court be thereto attached
36 as aforesaid. No tax or fee shall be charged by the clerk
37 for affixing his seal to the certificate referred to in this
38 section.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-2. Definitions.

§12-6-9. Permissible investments.

§12-6-11. Apportionment of interest earning deposits among state depositories;
interest rate on such deposits.

§12-6-13. Board as sole agency for investments; exceptions.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning
2 clearly appears from the context:

3 (1) "Board" means the West Virginia state board of
4 investments;

5 (2) "Consolidated fund" means the investment fund
6 managed by the board and established pursuant to sub-
7 section (b), section eight of this article;

8 (3) "Consolidated pension fund" means the invest-

9 ment fund managed by the board and established pur-
10 suant to subsection (a), section eight of this article;

11 (4) "Local government account" means the account
12 within the consolidated fund established pursuant to
13 subsection (b), section eight of this article;

14 (5) "Local government funds" means the moneys of
15 a political subdivision transferred to the board for deposit
16 in the local government account;

17 (6) "Pension funds" means and includes the work-
18 men's compensation fund; the state teachers retirement
19 system funds; the death, disability and retirement fund
20 for members of the department of public safety; the
21 public employees retirement system funds; the judges
22 retirement fund; and such other retirement or pension
23 funds and systems as may be hereafter established on
24 behalf of public employees of the state or of its political
25 subdivisions and administered by the state;

26 (7) "Securities" means all bonds, notes, debentures
27 or other evidences of indebtedness, and shall not mean
28 corporate stock;

29 (8) "State account" means the account within the
30 consolidated fund established pursuant to subsection (b),
31 section eight of this article; and

32 (9) "State funds" means all moneys of the state which
33 may be lawfully invested except (a) the pension funds
34 (as defined in subdivision (6) of this section) and (b)
35 the "school fund" established by section four, article XII
36 of the state constitution.

§12-6-9. Permissible investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law as to the investment of funds, the
3 board may invest funds made available to it in any of
4 the following:

5 (a) Any direct obligation of, or obligation guaranteed
6 as to the payment of both principal and interest by, the
7 United States of America;

8 (b) Any evidence of indebtedness issued by any of
9 the following agencies: Government National Mortgage
10 Association, Federal Land Banks, Federal Home Loan
11 Banks, Federal Intermediate Credit Banks, Banks for Co-
12 operatives, Tennessee Valley Authority, United States
13 Postal Service, Farmers Home Administration, Export-
14 Import Bank, Federal Financing Bank, Federal Home
15 Loan Mortgage Corporation, Student Loan Marketing As-
16 sociation and Federal Farm Credit Banks;

17 (c) Any evidence of indebtedness issued by the Federal
18 National Mortgage Association to the extent such in-
19 debtedness is guaranteed by the Government National
20 Mortgage Association;

21 (d) Any evidence of indebtedness that is secured by a
22 first lien deed of trust or mortgage upon real property
23 situate within this state, if the payment thereof is
24 substantially insured or guaranteed by the United States
25 of America or any agency thereof;

26 (e) Direct and general obligations of this state;

27 (f) Any undivided interest in a trust, the corpus of
28 which is restricted to mortgages on real property and,
29 unless all of such property is situate within the state
30 and insured, such trust at the time of the acquisition
31 of such undivided interest, is rated in one of the three
32 highest rating grades by an agency which is nationally
33 known in the field of rating pooled mortgage trusts;

34 (g) Any bond, note, debenture, commercial paper or
35 other evidence of indebtedness of any private corpora-
36 tion or association organized and operating in the United
37 States: *Provided*, That any such security is, at the time
38 of its acquisition, rated in one of the three highest rat-
39 ing grades by an agency which is nationally known in
40 the field of rating corporate securities: *Provided, however*,
41 That if any commercial paper and/or any such security
42 will mature within one year from the date of its issuance,
43 it shall, at the time of its acquisition, be rated in one of
44 the two highest rating grades by such an agency:
45 *Provided further*, That any such security not rated in
46 one of the two highest rating grades by any such agency

47 and commercial paper or other evidence of indebtedness
48 of any private corporation or association shall be pur-
49 chased only upon the written recommendation from an
50 investment adviser that has over three hundred million
51 dollars in other funds under its management;

52 (h) Negotiable certificates of deposit issued by any
53 bank, trust company, national banking association or
54 savings institution organized and operating in the United
55 States, which mature in less than one year and are fully
56 collateralized; and

57 (i) Interest earning deposits including certificates of
58 deposit, with any duly designated state depository, which
59 deposits are fully secured by a collaterally secured bond
60 as provided in section four, article one of this chapter.

**§12-6-11. Apportionment of interest earning deposits among
state depositories; interest rate on such deposits.**

1 Whenever the board determines that funds should be
2 invested in interest earning deposits, including certifi-
3 cates of deposit, with depositories eligible in this state
4 to receive such deposits, it shall equitably apportion
5 its offering of such funds among all such depositories
6 in this state. The board shall make such apportionment
7 by considering first the total assessed value of all prop-
8 erty within each county, and as to the distribution of
9 the offering within the county, by considering the net
10 loans outstanding of each bank and the mortgage loans
11 (exclusive of mortgage participations) of each state and
12 federal savings and loan association as set forth in the
13 banking commissioner's most recent report of financial
14 institutions qualifying as state depositories.

15 The annual rate of interest on funds placed in interest
16 earning deposits with state depositories, including cer-
17 tificates of deposit, shall be determined by the board
18 and may be adjusted by it from time to time according
19 to the then prevailing rate of interest.

§12-6-13. Board as sole agency for investments; exceptions.

1 All duties vested by law in any agency, commission,
2 official or other board of the state relating to the invest-

3 ment of moneys, and the acquisition, sale, exchange or
4 disposal of securities or any other investment are here-
5 by transferred to the board, and the board shall be
6 the sole agency for the investment of pension funds
7 and state funds: *Provided*, That neither this section
8 nor any other section of this article shall apply to the
9 "board of the school fund" and the "school fund" estab-
10 lished by section four, article XII of the state constitu-
11 tion: *Provided, however*, That funds under the control of
12 the municipal bond commission may, in the discretion of
13 the commission, be made available to the board for in-
14 vestment to be invested by the commission as provided
15 in article three, chapter thirteen of this code.

CHAPTER 66

(S. B. 75—By Mr. Brotherton, Mr. President, and Mr. Tonkovich)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three of said chapter by adding thereto a new section, designated section three-a, all relating to the Legislature; authorizing a select committee unique to one house or any standing committee of that house to meet during the interim; providing travel and interim expense reimbursement; providing for staff; providing for creation and composition of legislative committees by resolution or on motion of the joint committee on government and finance; providing interim compensation for some interim committees; providing for the coordination of interim meetings by the joint committee on government and finance; requiring the joint committee on government and finance to make studies and surveys and to continue ongoing and continued studies; and allowing the joint committee on government and finance to commission studies by standing committees.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **Officers, Members and Employees; Appropriations; Investigations; Display of Flags; Records; Use of Capitol Building; Prefiling of Bills and Resolutions; Standing Committees; Interim Meetings.**
3. **Joint Committee on Government and Finance.**

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-1. Interim meetings of legislative committees and subcommittees; interim meeting coordination; compensation and expenses.

1 (a) Either house of the Legislature may, by resolution,
2 direct any select committee unique to that house or any
3 standing committee of that house and created by it by rule,
4 motion or resolution to meet between regular sessions of
5 the Legislature. The presiding officer of such house may
6 designate subcommittees of such standing or select com-
7 mittees and shall designate the chairman and member-
8 ship thereof. Such committees or subcommittees shall
9 function according to the rules for committees of the
10 house creating them.

11 Members of such committees or subcommittees under
12 this subsection, performing duties as members thereof,
13 shall receive travel expense reimbursement as provided
14 in section six, article two-a, chapter four and interim
15 expense reimbursement as provided in section eight, ar-
16 ticle two-a, chapter four. However, to be eligible to re-
17 ceive travel expense reimbursement and interim expense
18 reimbursement, meetings of these select committees and
19 subcommittees thereof must be authorized by the rules
20 committee of such house. Expenses shall be paid from any

21 appropriation to the use and benefit of the house adopting
22 the resolution.

23 Such committees or subcommittees shall have such staff
24 as may be directed by the presiding officer of that house
25 from which its membership is drawn, which may be paid
26 for from appropriations to the use and benefit of such
27 house, as designated by the rules committee thereof.

28 (b) From the date of adjournment *sine die* of any regu-
29 lar session of the Legislature until the first day of the
30 next succeeding regular session of the Legislature, the
31 Legislature by concurrent resolution, or the joint com-
32 mittee on government and finance on its own motion, may
33 appoint a joint standing committee or a joint select com-
34 mittee, or any joint subcommittee of such standing or
35 select committee, to function under the supervision of the
36 joint committee on government and finance. Any such
37 committee or subcommittee shall be composed of the
38 standing or select committees of the respective houses
39 having similar titles or jurisdiction, and similarly consti-
40 tuted, and the membership thereof shall be composed of
41 members of the respective standing or select committees
42 of each house, or subcommittees thereof, or be designated
43 by the presiding officer of each house: *Provided*, That the
44 membership of such joint committee or subcommittee
45 may be drawn from more than one such standing or
46 select committee.

47 (c) Members of the Legislature performing interim
48 duties as members of the joint committee on government
49 and finance, the commission on interstate cooperation, the
50 joint committee on government operations, the legislative
51 commission on pensions and retirement, the legislative
52 rule-making review committee, the purchasing practices
53 and procedures commission, standing committees of the
54 Senate and of the House of Delegates, and authorized
55 subcommittees of each of the above committees and com-
56 missions are authorized to meet between regular sessions
57 of the Legislature, subject to the direction of the joint
58 committee on government and finance. Members of the
59 Legislature performing interim duties as a member of

60 said committees or commissions, or subcommittees there-
61 of, under this subsection, shall receive interim compensa-
62 tion as provided in section five, article two-a, chapter
63 four; travel expense reimbursement as provided in sec-
64 tion six, article two-a, chapter four; and interim expense
65 reimbursement as provided in section eight, article two-a,
66 chapter four. However, to be eligible to receive the in-
67 terim compensation, travel expense reimbursement and
68 interim expense reimbursement, payment must be autho-
69 rized by the joint committee on government and finance.

70 The joint committee on government and finance shall
71 coordinate meetings, of said committees and commissions,
72 and subcommittees thereof, between regular sessions of
73 the Legislature.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FI- NANCE.

§4-3-3a. Interim powers and duties.

1 The joint committee on government and finance shall
2 coordinate meetings between regular sessions of the Leg-
3 islature of all legislative committees and legislative com-
4 missions established by and operating under general law
5 and shall authorize interim meetings of said committees
6 and commissions.

7 The joint committee on government and finance shall
8 study and survey matters of government, finance and
9 claims against the state as authorized by section three,
10 article three, chapter four. In addition, the joint com-
11 mittee may make studies it was directed to make by con-
12 current resolutions heretofore adopted by the Legislature
13 and continued for additional study by the joint commit-
14 tee by concurrent resolutions adopted by the Legislature.
15 The joint committee may make these studies by creation
16 of subcommittees.

17 The joint committee may commission studies to be
18 made jointly by appropriate standing committees of each
19 house of the Legislature between regular sessions of the
20 Legislature.

CHAPTER 67

(S. B. 288—By Mr. Palumbo)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to allowing members and members-elect of the Legislature to prefile bills and resolutions; numbering and referral of prefiled bills and resolutions; duplication and distribution of prefiled bills and resolutions; prefiled bills and resolutions not subject to withdrawal or amendment prior to formal introduction; and preparation of prefiled bills and resolutions for formal introduction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-21. Prefiling of bills and resolutions.

1 (a) Within the thirty-day period immediately preced-
 2 ing the convening of the Legislature for commencement
 3 of a regular session thereof, any proposed bill or resolu-
 4 tion may be prefiled by any member of the Legislature
 5 or by any person who has been elected or appointed to
 6 serve as a member of the Legislature but who has not
 7 yet been administered the oath of office. Such proposed
 8 bills or resolutions shall be filed with the clerk of the
 9 house in which the member or person will serve during
 10 the following regular session not later than the day
 11 preceding the opening of such session: *Provided*, That

12 nothing herein shall affect a member's right to introduce
13 a bill or resolution in accord with the rules of the house
14 of which he is a member.

15 (b) In addition to such number of copies of bills as
16 may be required to be presented for introduction by the
17 rules of the respective houses, all bills or resolutions
18 prefiled shall have two additional copies appended. After
19 numbering such bills or resolutions and editing and cor-
20 recting them as to form, as may be required by the rules
21 of the respective houses, the appropriate clerk shall make
22 a tentative referral to the appropriate committee of the
23 house, forwarding two copies thereof to the committee.
24 Prior to making such tentative referral, the clerk shall
25 confer with the presiding officer of the appropriate house
26 if such presiding officer is available and make such re-
27 ferral as such presiding officer shall direct. Upon the
28 commencement of the session of the Legislature, the
29 clerk, upon ratification by the appropriate presiding offi-
30 cer of the tentative referral, shall proceed with the formal
31 introduction of prefiled bills or resolutions according to
32 the method of introducing bills as may be provided by
33 the rules of the respective houses.

34 (c) Copies of prefiled bills and resolutions shall be
35 mailed to any member and each member-elect of the
36 Legislature requesting the same and reasonable quantities
37 shall be made available to the public and the news media.

38 (d) Once a bill or resolution is prefiled as herein pro-
39 vided, it may not be withdrawn or amended prior to its
40 formal introduction unless the rules of the house involved
41 otherwise direct.

CHAPTER 68

(S. B. 101—By Mr. Brotherton, Mr. President)

[Passed January 25, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two through ten, in-
clusive, article two-a, chapter four of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to implementing recommendations of one thousand nine hundred seventy-nine, of the citizens legislative compensation commission created by section thirty-three, article six of the West Virginia constitution, and relating to compensation for and expenses of members of the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

PART II. COMPENSATION.

- §4-2A-2. Basic compensation for services; proration.
- §4-2A-3. Compensation for members of the Legislature during any extraordinary session.
- §4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders and minority leaders of both houses.
- §4-2A-5. Interim compensation for members of joint committee on government and finance and commission on interstate cooperation and for restructured interim meetings.

PART III. EXPENSES.

- §4-2A-6. Travel expenses.
- §4-2A-7. Reimbursement for expenses incurred during any session.
- §4-2A-8. Interim expenses.
- §4-2A-9. Out-of-state expenses.
- §4-2A-10. Affidavits required; approval by legislative auditor of vouchers; travel and lodging expenses within Charleston not reimbursable; rules authorized.

PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

- 1 (a) Each member of the Legislature shall receive as
- 2 basic compensation for his services the sum of five thou-
- 3 sand one hundred thirty-six dollars per calendar year as

4 basic compensation, plus additional compensations as are
5 expressly provided for in sections three, four and five of
6 this article. For the year one thousand nine hundred
7 seventy-nine, said basic compensation shall be payable to
8 each member as soon as possible after the effective date
9 of this section.

10 (b) Beginning in the year one thousand nine hundred
11 eighty and each year thereafter, said basic compensation
12 shall be payable twice a month during each regular
13 session of the Legislature, without regard to any exten-
14 sion of such regular session. In the event of the death,
15 resignation or removal of a member of the Legislature
16 during a regular session of the Legislature and the ap-
17 pointment and qualification of his successor during any
18 such regular session, the basic compensation provided
19 for in this section shall be prorated between the original
20 member and his successor on the basis of the number of
21 days served (including Saturdays and Sundays) as a
22 member of the Legislature by each during said regular
23 session.

24 (c) In the event of the death, resignation or removal
25 of a member of the Legislature and the appointment and
26 qualification of his successor subsequent to the regular
27 session of the Legislature held in the calendar year in
28 which such successor was appointed and qualified, none
29 of the basic compensation provided for in this section
30 shall be paid to such successor.

**§4-2A-3. Compensation for members of the Legislature during
any extraordinary session.**

1 Each member of the Legislature shall receive, in addi-
2 tion to the basic compensation provided for in section
3 two of this article, additional compensation of thirty-five
4 dollars per day for each day of his attendance in person
5 upon any business of the Senate or House of Delegates,
6 as the case may be, on each day upon which said Senate
7 or House of Delegates is actually called to order during
8 each extraordinary session of the Legislature. Such ad-
9 ditional compensation shall be paid from time to time

10 during any such extraordinary session, as may be pre-
11 scribed by rules established by the legislative auditor.

**§4-2A-4. Additional compensation for president of Senate,
speaker of House of Delegates, majority leaders and
minority leaders of both houses.**

1 (a) In addition to the basic and additional compensation
2 provided for in sections two and three of this article, the
3 president of the Senate and the speaker of the House
4 of Delegates shall each receive additional compensation
5 of:

6 (1) Thirty-five dollars per day for each day actually
7 served during any regular or extraordinary session as
8 presiding officer, including Saturdays and Sundays; and

9 (2) Thirty-five dollars per day up to a maximum of
10 eighty such days per calendar year for attending to
11 legislative business in their offices in the Capitol Build-
12 ing when the Legislature is not in regular or extraor-
13 dinary session and interim committees are not meeting.

14 (b) In addition to the basic and additional compensa-
15 tion provided for in sections two and three of this article,
16 the majority leaders and minority leaders of the Senate
17 and of the House of Delegates shall each receive addi-
18 tional compensation of fifteen dollars per day for each
19 day actually served during any regular or extraordinary
20 session as the selected legislative leaders of their respec-
21 tive political parties, including Saturdays and Sundays.

22 (c) Such presiding officer and majority and minority
23 leader compensation shall be paid from time to time
24 during any such session or interim period, as the case
25 may be, as may be prescribed by rules established by the
26 legislative auditor.

**§4-2A-5. Interim compensation for members of joint commit-
tee on government and finance and commission on
interstate cooperation and for restructured interim
meetings.**

1 (a) In addition to the basic and any additional and
2 presiding officer and majority and minority leader com-

3 pensation provided for in sections two, three and four of
4 this article, each member of the joint committee on
5 government and finance and the commission on interstate
6 cooperation shall receive interim compensation of thirty-
7 five dollars per day for each day actually engaged in
8 the performance of interim duties as a member of either
9 such committee or commission between regular sessions
10 of the Legislature: *Provided*, That not more than twenty-
11 eight members combined of both such committee and
12 commission shall be entitled to receive the interim com-
13 pensation authorized in this section, and the total addi-
14 tional interim compensation payable to any such member
15 and his replacement, if any, on such committee or com-
16 mission under the provisions of this section shall not
17 exceed the sum of one thousand fifty dollars per calendar
18 year.

19 (b) If, for whatever reason, the Legislature should
20 restructure its interim committee meetings along any
21 lines whatsoever, the interim compensation authorized
22 in subsection (a) of this section for members of the
23 joint committee on government and finance and of the
24 commission on interstate cooperation and the additional
25 interim compensation authorized in this subsection may
26 be authorized as interim compensation by the Legislature
27 as it may determine, but not to exceed either thirty-five
28 dollars per member of the Legislature per day for each
29 day actually engaged in the performance of interim
30 duties as a member of the Legislature, or a total of one
31 thousand fifty dollars per calendar year for any one
32 member, or a total of fifty-five thousand dollars per
33 calendar year for all such interim compensation for the
34 members of both houses of the Legislature combined.

PART III. EXPENSES.

§4-2A-6. Travel expenses.

1 Each member of the Legislature shall be entitled to be
2 reimbursed, upon submission of an expense voucher, for
3 expenses incurred incident to travel in the performance of
4 his duties as a member of the Legislature or any com-
5 mittee of the Legislature, whether such committee is

6 operating under general law or resolution, including, but
7 not limited to, attendance at party caucuses held in ad-
8 vance of the date of the assembly of the Legislature in
9 regular session in odd-numbered years for the purpose
10 of selecting candidates for officers of the two houses, at
11 the rate of seventeen cents per mile for the most direct
12 usually traveled route, if travel is by private automobile,
13 or for actual transportation costs for direct route travel,
14 if travel is by public carrier, or for any combination of
15 such means of transportation actually used, plus the cost
16 of necessary taxi or limousine service, tolls and parking
17 fees in connection therewith, but during any regular or
18 extraordinary session, travel expenses shall not be paid to
19 any member for more than one round trip to and from the
20 seat of government and to and from his place of residence
21 for each week of any such session.

22 In addition to the above travel expense, the president
23 of the Senate and the speaker of the House of Delegates
24 shall be entitled to be reimbursed as provided above, upon
25 submission of an expense voucher, for expenses incurred
26 incident to travel for up to a maximum of eighty days per
27 calendar year in connection with their visits to the Capi-
28 tol building for business which is related to their duties
29 as presiding officers of the respective houses of the
30 Legislature, but which takes place when the Legislature
31 is not in regular or extraordinary session and interim
32 committees are not meeting.

§4-2A-7. Reimbursement for expenses incurred during any session.

1 In addition to reimbursement for any travel expenses,
2 as provided for in section six of this article, each member
3 of the Legislature shall also be entitled to be reimbursed,
4 upon submission of an expense voucher therefor, for all
5 reasonable and necessary expenses actually incurred in
6 connection with any regular or extraordinary session of
7 the Legislature, but the total of any and all such reim-
8 bursed expenses, exclusive of reimbursement for any such
9 travel expenses as aforesaid, shall not exceed lodging
10 expenses of thirty dollars per day and meal and miscel-

11 laneous expenses of twenty dollars per day. A receipt for
12 the amount paid for lodging shall be submitted with the
13 expense voucher, but a receipt shall not be required to be
14 submitted with any such expense voucher for meal and
15 miscellaneous expenses. In lieu of reimbursement for
16 lodging expenses pursuant to the provisions of this sec-
17 tion, any member of the Legislature shall be entitled to be
18 reimbursed, upon submission of an expense voucher, for
19 expenses incurred incident to daily travel to and from his
20 place of residence and to and from the seat of govern-
21 ment at a rate of seventeen cents per mile for the most
22 direct usually traveled route, but the total of such daily
23 travel expenses shall not exceed thirty dollars per night.

§4-2A-8. Interim expenses.

1 In addition to reimbursement for any travel expenses
2 and any such reimbursements for any and all such
3 session expenses as provided for in sections six and seven
4 of this article, each member of the Legislature serving as
5 a member of any committee of the Legislature established
6 by and operating under general law and designated for
7 the performance of interim assignments by the Legisla-
8 ture or otherwise duly authorized to perform interim
9 assignments between regular sessions of the Legislature
10 shall also be entitled to be reimbursed, upon submission
11 of an expense voucher therefor, for all reasonable and
12 necessary expenses actually incurred incident to the per-
13 formance of duties as a member of any such committee,
14 but the total of any and all such reimbursed interim
15 expenses, exclusive of reimbursement for any such travel
16 and session expenses as aforesaid, shall not under any
17 circumstances exceed lodging expenses of thirty dollars
18 per day and meal and miscellaneous expenses of twenty
19 dollars per day for each day actually engaged in the
20 performance of interim duties as a member of any such
21 committee. The president of the Senate and the speaker
22 of the House of Delegates shall be entitled to be re-
23 imbursemented for lodging expenses and for meal and miscel-
24 laneous expenses incurred in connection with their visits
25 to the Capitol building for business which is related to
26 their duties as presiding officers of the respective houses

27 of the Legislature, but which takes place when the Legis-
28 tature is not in regular or extraordinary session and
29 interim committees are not meeting, not to exceed lodg-
30 ing expenses of thirty dollars per day and meal and
31 miscellaneous expenses of twenty dollars per day up to a
32 maximum of eighty such days per calendar year. A
33 receipt for the amount paid for lodging shall be submitted
34 with the expense voucher, but a receipt shall not be
35 required to be submitted with any such expense voucher
36 for meal and miscellaneous expenses. In lieu of re-
37 imbursement for lodging expenses pursuant to the pro-
38 visions of this section, any member of the Legislature
39 shall be entitled to be reimbursed, upon submission of an
40 expense voucher, for expenses incurred incident to daily
41 travel to and from his place of residence and to and from
42 the seat of government at a rate of seventeen cents per
43 mile for the most direct usually traveled route, but the
44 total of such daily travel expenses shall not exceed
45 thirty dollars per night.

§4-2A-9. Out-of-state expenses.

1 In addition to reimbursement for travel expenses as
2 authorized in section six of this article, each member of
3 the Legislature traveling from West Virginia to an out-
4 of-state point or points and return incident to the per-
5 formance of his duties as a member of the Legislature or
6 any committee of the Legislature, whether such com-
7 mittee is operating under general law or resolution, which
8 travel has been duly authorized, shall be entitled to be
9 reimbursed, upon submission of an expense voucher
10 therefor, for all reasonable and necessary expenses
11 actually incurred incident thereto, but the total of any
12 and all such reimbursed expenses, exclusive of reim-
13 bursement for such travel expenses, shall not under any
14 circumstances exceed the actual cost of lodging at the
15 least expensive available single rate and meal and miscel-
16 laneous expenses of twenty-five dollars per day. A
17 receipt for the amount paid for lodging and for travel
18 by any public transportation to and from West Virginia
19 shall be submitted with the expense voucher, but a re-
20 ceipt shall not be required to be submitted with any such
21 expense voucher for meal and miscellaneous expenses.

§4-2A-10. Affidavits required; approval by legislative auditor of vouchers; travel and lodging expenses within Charleston not reimbursable; rules authorized.

1 Any expense voucher submitted pursuant to the
2 provisions of section six, seven, eight or nine of this
3 article must be verified by the affidavit of the member
4 incurring such expense and all such expense vouchers
5 shall be approved by the legislative auditor prior to sub-
6 mission for payment.

7 Notwithstanding any other provisions of this article
8 to the contrary, no member of the Legislature who resides
9 within the corporate limits of the city of Charleston
10 may be reimbursed under this article for any travel and
11 lodging expenses incurred within such corporate limits.

12 The legislative auditor is hereby authorized to adopt,
13 amend and repeal such rules as may be necessary to
14 implement or effectuate the provisions of this article.

CHAPTER 69

(Revised Com. Sub. for S. B. 2—By Mr. Palumbo)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections two-a, six and eight, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one of said chapter by adding thereto two new sections, designated sections fourteen and fifteen; to amend article five of said chapter by adding thereto a new section, designated section one-a; to amend and reenact sections one, two, three and four of said article; and to amend and reenact section two, article six-a of said chapter, all relating to legal proceedings for involuntary hospitalization of the mentally ill; defining detained or taken into custody; defining computation of time; providing for the appointment of a mental hygiene commissioner; setting

forth the duties of the mental hygiene commissioner, prosecuting attorney and sheriff; providing for the appointment of attorneys to aid prosecutors in involuntary commitment hearings in counties wherein a state mental health facility is located; providing a procedure for involuntary custody for examination; providing for a probable cause hearing and medical examination; repeal of the probable cause hearing; providing for admission to a mental health facility for examination upon entry of an order finding probable cause and upon certification by one physician or one psychologist; providing for release of the individual if examination does not take place within three days of detention for custody; setting forth notice requirements of admission of an individual to a mental health facility for examination; providing for examination after admission to a mental health facility; providing a thirty-day time limit for conclusion of all proceedings; providing generally for involuntary commitment to a mental health facility by order of the circuit court of the county wherein the person resides or was found or in the county of the mental health facility in which he is hospitalized, after a full hearing; setting forth the notice requirements and hearing requirements for involuntary commitment; providing the right to have counsel appointed for the indigent individual; removing the requirement that the court-appointed physician or psychologist be other than the one whose certification accompanied the application; setting forth the rights of the individual at the final commitment hearing; providing for payment of attorneys appointed for individuals; providing for a record of the hearing; providing that a transcript be made available to the individual, his counsel, or the prosecuting attorney when requested for further proceedings; increasing to ten days the time which an individual may be detained until an order is received by the mental health facility; requiring that an order for an indeterminate period shall expire automatically after two years unless the department of health extends the order; providing a hearing on the extension of an order for an indeterminate period upon request of the individual or his counsel; requiring a report to the director of health; providing for the payment of some costs of the proceedings

from the "mental hygiene fund"; establishing the "mental hygiene fund" within the office of the supreme court of appeals of this state; payment of some costs of the proceedings by the county commission; repeal of examination of newly admitted patients; repeal of periodic examination and review of patient's hospitalization; requiring the institution of civil commitment proceedings against defendants in felony cases who are found incompetent to stand trial with no substantial likelihood of obtaining competency; requiring review of the individual's competency to stand trial every six months; and requiring trial of the defendant if he is found competent to stand trial.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Words and Phrases Defined.

5. Involuntary Hospitalization.

6A. Commitment of Persons Charged or Convicted of a Crime.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-14. Detained or taken into custody.

§27-1-15. Computation of time.

§27-1-14. Detained or taken into custody.

1 "Detained or taken into custody" where used in this
2 chapter shall permit detention for custody in a county
3 facility which may be in the same building as the county
4 jail if the said county facility:

5 (a) Meets the standards which the department of
6 health shall prescribe; and

7 (b) Is approved for such use by the department of
8 health; and

9 (c) Is inspected annually by the department of health.

§27-1-15. Computation of time.

1 The provisions of section one, article two, chapter two
2 of this code shall apply to the time fixed for doing any
3 act under this chapter.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.

1 (a) *Appointment of mental hygiene commissioner.*
2 The circuit court of each county shall appoint a competent
3 attorney and, if necessary, one additional attorney to
4 serve as an alternate, in each county to preside over such
5 involuntary hospitalization hearings, who shall be desig-
6 nated "mental hygiene commissioner." He shall be a
7 person of good moral character and of standing in his
8 profession and he shall, before assuming the duties of
9 such commissioner, take the oath required of other special
10 commissioners as provided in article one, chapter six
11 of this code.

12 (b) *Duties of mental hygiene commissioner.* The
13 mental hygiene commissioner may sign and issue sum-
14 mons for the attendance, at any hearing held pursuant to
15 section four, article five of this chapter, of the individual
16 sought to be committed; may sign and issue subpoenas

17 for witnesses, including subpoenas duces tecum; may
18 place any witness under oath; and may make findings
19 of fact on evidence and may make conclusions of law,
20 but such findings and conclusions shall not be binding on
21 the circuit court. The circuit court by order entered
22 of record shall allow the commissioner a reasonable fee
23 for his services in connection with each case. The mental
24 hygiene commissioner shall discharge his duties and hold
25 his office at the pleasure of the circuit court by which
26 he is appointed and may be removed at any time by the
27 court. It shall be the duty of the mental hygiene com-
28 missioner to conduct orderly inquiries into the mental
29 health of any individual brought before him concerning
30 the advisability of committing the individual to a mental
31 health facility. The mental hygiene commissioner shall
32 safeguard, at all times, the rights and interests of the
33 individual as well as the interests of the state. The mental
34 hygiene commissioner shall make a written report of his
35 findings to the circuit court. In any proceedings before
36 any court of record as set forth in this article, the court
37 of record shall appoint an interpreter for any individual
38 who is deaf or cannot speak or who speaks a foreign
39 language and who may be subject to involuntary com-
40 mitment to a mental health facility.

41 (c) *Duties of prosecuting attorney.* In all proceedings
42 under this article, it shall be the duty of the prosecuting
43 attorney or one of his assistants to represent the ap-
44 plicants.

45 (d) *Duties of sheriff.* Upon written order of the circuit
46 court or the mental hygiene commissioner of the county
47 where the individual formally accused of being mentally
48 incompetent, mentally retarded or addicted is a resident
49 or is found, the sheriff of that county shall take said
50 individual into custody and transport him to and from
51 the place of hearing and the mental health facility.

**§27-5-1a. Appointment of attorney to aid prosecutor; certifica-
tion of performance; fee.**

1 If, in any case, the prosecuting attorney and his as-
2 sistants in a county in which there is a state mental

3 health hospital are unable to act due to a burdensome
4 number of cases brought under this article, the circuit
5 court shall appoint some competent practicing attorney
6 to act in that case. The court shall certify to the director
7 of the administrative office of the supreme court of ap-
8 peals the performance of that service when completed
9 and may allow the attorney a reasonable fee not to exceed
10 the amount allowed for attorneys in defense of needy
11 persons as provided in article eleven, chapter fifty-one
12 of this code. Compensation shall be paid out of the
13 "mental hygiene fund" provided for in section four of
14 this article.

**§27-5-2. Institution of proceedings for involuntary custody for
examination; custody; probable cause hearing; ex-
amination of individual.**

1 (a) *When application for involuntary custody for ex-*
2 *amination may be made.* Any adult person may make
3 application for involuntary hospitalization for examina-
4 tion of an individual when said person has reason to
5 believe that:

6 (1) The individual is mentally ill, mentally retarded
7 or addicted, and

8 (2) That because of his mental illness, mental re-
9 tardation or addiction, the individual is likely to cause
10 serious harm to himself or others if allowed to remain
11 at liberty while awaiting an examination and certification
12 by a physician or psychologist.

13 (b) *Oath; to whom application for involuntary custody*
14 *for examination is made; contents of application; custody;*
15 *probable cause hearing; examination.*

16 (1) The person making such application shall do so
17 under oath.

18 (2) Application for involuntary custody for examina-
19 tion may be made to the circuit court or mental hygiene
20 commissioner of the county in which the individual re-
21 sides, or of the county in which he may be found.

22 (3) The person making such application shall give

23 such information and state such facts therein as may be
24 required, upon the form provided for this purpose by the
25 department of health.

26 (4) The circuit court or mental hygiene commissioner
27 may thereupon enter an order for the individual named
28 in such action to be detained and taken into custody, for
29 the purpose of holding a probable cause hearing described
30 in subdivision five of this subsection and for the purpose
31 of an examination of the individual by one physician or
32 one psychologist. The said order shall specify the se-
33 quence in which such hearing and examination shall
34 occur, shall require that such hearing be held forthwith,
35 and shall appoint counsel for the individual.

36 (5) A probable cause hearing shall be held before a
37 magistrate, the mental hygiene commissioner or circuit
38 judge of the county of which the individual is a resident
39 or where he was found. If requested by the individual
40 or his counsel, the hearing may be postponed for a
41 period not to exceed forty-eight hours.

42 The individual must be present at the hearing and
43 shall have the right to present evidence, confront all
44 witnesses and other evidence against him, and to ex-
45 amine testimony offered. The individual shall have the
46 right to remain silent and to be proceeded against by the
47 rules of evidence. At the conclusion of the hearing the
48 magistrate, mental hygiene commissioner or circuit court
49 shall find and enter an order stating whether or not
50 there is probable cause to believe that such individual
51 as a result of mental illness, mental retardation or addic-
52 tion is likely to cause serious harm to himself or others.

**§27-5-3. Admission under involuntary hospitalization for ex-
amination; hearing; release.**

1 (a) *Admission to a mental health facility for examina-*
2 *tion.* Any individual may be admitted to a mental health
3 facility for examination upon entry of an order finding
4 probable cause as provided in section two of this article
5 and upon certification by one physician or one psycholo-
6 gist that he has examined the individual and that he is of
7 the opinion the individual is mentally ill, mentally retard-

8 ed or addicted and because of his mental illness, mental
9 retardation or addiction is likely to cause serious harm to
10 himself or others if not immediately restrained. The chief
11 medical officer of said mental health facility may, with the
12 approval of the director of health, transfer such individ-
13 ual to a state hospital or to another similar type of mental
14 health facility after determining that no less restrictive
15 treatment alternative is suitable or available. The chief
16 medical officer of the mental health facility admitting the
17 individual shall forthwith make a report thereof to the
18 director of health.

19 (b) *Three-day time limitation on examination.* If said
20 examination does not take place within three days from
21 the date the individual is taken into custody, the individ-
22 ual shall be released. If the examination reveals that the
23 individual is not mentally ill, mentally retarded or addic-
24 ted, the individual shall be released.

25 (c) *Three-day time limitation on certification.* The cer-
26 tification required in subsection (a) of this section shall
27 be valid for three days. Any individual with respect to
28 whom such certification has been issued may not be ad-
29 mitted on the basis thereof at any time after the expira-
30 tion of three days from the date of such examination.

31 (d) *Findings and conclusions required for certification.*
32 A certification under this section must include findings
33 and conclusions of the mental examination, the date,
34 time and place thereof, and the facts upon which the con-
35 clusion of likelihood of causing serious harm is based.

36 (e) *Notice requirements.* When an individual is ad-
37 mitted to a mental health facility pursuant to the pro-
38 visions of this section, the chief medical officer thereof
39 shall immediately give notice of the individual's admis-
40 sion to the individual's spouse, if any, and one of the
41 individual's parents or parent or guardian, or if there be
42 no such spouse, parents or guardians to one of the indi-
43 vidual's adult next of kin: *Provided*, That such next of
44 kin shall not be the applicant. Notice shall also be given
45 to the community mental health facility, if any, having

46 jurisdiction in the county of the individual's residence.
47 Such notices other than to the community mental health
48 facilities shall be in writing and shall be transmitted to
49 such person or persons at his, her or their last-known
50 address by certified or registered mail, return receipt
51 requested.

52 (f) *Five-day time limitation for examination and cer-*
53 *tification at mental health facility.* After the individual's
54 admission to a mental health facility, he shall not be de-
55 tained more than five days excluding Sundays and holi-
56 days, unless, within such period, the individual is ex-
57 amined by a staff physician and such physician certifies
58 that in his opinion the patient is mentally ill, mentally
59 retarded or addicted and is likely to injure himself or
60 others if allowed to be at liberty.

61 (g) *Ten-day time limitation for institution of final*
62 *commitment proceedings.* If, in the opinion of the exam-
63 ining physician, the patient is mentally ill, mentally re-
64 tardated or addicted and because of such mental illness,
65 mental retardation or addiction he is likely to injure
66 himself or others if allowed to be at liberty, the chief
67 medical officer shall, within ten days from the date of
68 admission, institute final commitment proceedings as pro-
69 vided in section four of this article. If such proceedings
70 are not instituted within such ten-day period, the patient
71 shall be immediately released. After the request for hear-
72 ing is filed, the hearing shall not be canceled on the basis
73 that the individual has become a voluntary patient unless
74 the mental hygiene commissioner concurs in the motion
75 for cancellation of the hearing.

76 (h) *Thirty-day time limitation for conclusion of all*
77 *proceedings.* If all proceedings as provided in article three
78 and article four of this chapter are not completed within
79 thirty days from the date of institution of such proceed-
80 ings, the patient shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* Except as provided in
2 section three of this article, no individual shall be in-

3 voluntarily committed to a mental health facility except
4 by order entered of record at any time by the circuit
5 court of the county wherein such person resides or was
6 found, or if the individual is hospitalized in a mental
7 health facility located in a county other than where he
8 resides or was found, in the county of the mental health
9 facility, and then only after a full hearing on issues
10 relating to the necessity of committing an individual to
11 a mental health facility: *Provided*, That if said individual
12 objects to the hearing being held in the county where
13 the mental health facility is located, the hearing shall
14 be conducted in the county of the individual's residence.

15 (b) *How final commitment proceedings are com-*
16 *menced.* Final commitment proceedings for an individual
17 may be commenced by the filing of a written application
18 under oath and the certificate or affidavit is hereinafter
19 provided with the clerk of the circuit court or mental
20 hygiene commissioner of the county of which the indi-
21 vidual is a resident, or where he may be found, or the
22 county of the mental health facility, if he is hospitalized
23 in a mental health facility located in a county other
24 than where he resides or may be found, by an adult
25 person having personal knowledge of the facts of the
26 case.

27 (c) *Oath; contents of application; who may inspect*
28 *application; when application cannot be filed.*

29 (1) The person making such application shall do so
30 under oath.

31 (2) The application shall contain statements by the
32 applicant that he believes because of symptoms of mental
33 illness, mental retardation or addiction, the individual is
34 likely to cause serious harm to himself or others and the
35 grounds for such belief, stating in detail the recent overt
36 acts upon which such belief is based: *Provided*, That no
37 such statement of recent overt acts need be made when
38 the applicant alleges the individual is likely to cause
39 serious harm as a result of having a complete inability
40 to care for himself by reason of mental retardation.

41 (3) The written application, certificate, affidavit and

42 any warrants issued pursuant thereto, including any
43 papers and documents related thereto filed with any
44 circuit court or mental hygiene commissioner for the
45 involuntary hospitalization of any individual shall not be
46 open to inspection by any person other than the indi-
47 vidual, except upon authorization of the individual or
48 his legal representative or by order of the circuit court,
49 and such records shall not be published except upon the
50 authorization of the individual or his legal representa-
51 tive.

52 (4) Applications shall not be filed with regard to
53 individuals who are merely epileptics, mentally deficient
54 or senile.

55 (d) *Certificate filed with application; contents of cer-*
56 *tificate; affidavit by applicant in place of certificate.*

57 (1) The applicant shall file with his application the
58 certificate of a physician or a psychologist stating that in
59 his opinion the individual is mentally ill, mentally re-
60 tardated or addicted and that because of his mental illness,
61 mental retardation or addiction, the individual is likely
62 to cause serious harm to himself or others if he is allowed
63 to remain at liberty and therefore he should be hos-
64 pitalized, stating in detail the recent overt acts upon
65 which such conclusion is based: *Provided*, That no such
66 statement of recent overt acts need be made when the
67 applicant alleges the individual is likely to cause serious
68 harm as a result of having a complete inability to care
69 for himself by reason of mental retardation.

70 (2) A certificate is not necessary only when an affidavit
71 is filed by the applicant showing facts that the individual
72 has refused to submit to examination by a physician or
73 a psychologist.

74 (e) *Notice requirements; eight days' notice required.*
75 Upon receipt of an application, the mental hygiene com-
76 missioner or circuit court shall review the application
77 and if it is determined that the facts alleged, if any, are
78 sufficient to warrant involuntary hospitalization, forth-
79 with fix a date for and have the clerk of the circuit court
80 give notice of the hearing (1) to the individual, (2) to

81 the applicant or applicants, (3) to the individual's spouse,
82 one of the parents or guardians, or if the individual does
83 not have a spouse, parents or parent or guardian, to one
84 of the individual's adult next of kin: *Provided*, That such
85 person is not the applicant, (4) to the mental health
86 authorities serving the area, (5) to the circuit court in
87 the county of the individual's residence if the hearing
88 is to be held in a county other than that of such indi-
89 vidual's residence, and (6) to the prosecuting attorney
90 of the county in which the hearing is to be held. Such
91 notice shall be served on the individual by personal
92 service of process not less than eight days prior to the
93 date of the hearing, and shall specify the nature of the
94 charges against the individual; the facts underlying and
95 supporting the application of his involuntary commit-
96 ment; his right to have counsel appointed for him; his
97 right to consult with and be represented by counsel at
98 every stage of the proceedings; and the time and place
99 of the hearing. The notice to the individual's spouse,
100 parents or parent or guardian, the individual's adult next
101 of kin, or to the circuit court in the county of the indi-
102 vidual's residence may be by personal service of process
103 or by certified or registered mail, return receipt re-
104 quested, and shall state the time and place of the
105 hearing.

106 (f) *Examination of individual by court-appointed phy-*
107 *sician or psychologist; custody for examination; dismissal*
108 *of proceedings.*

109 (1) Except as provided in subsection three of this
110 section, within a reasonable time after notice of the
111 commencement of final commitment proceedings is given,
112 the circuit court or mental hygiene commissioner shall
113 appoint a physician or psychologist to examine the indi-
114 vidual and report to the circuit court or mental hygiene
115 commissioner his findings as to the mental condition of
116 the individual and the likelihood of his causing serious
117 harm to himself or others.

118 (2) If the designated physician or psychologist reports
119 to the circuit court or mental hygiene commissioner that
120 the individual has refused to submit to an examination,

121 the circuit court or mental hygiene commissioner shall
122 order him to submit to such examination. The circuit
123 court or mental hygiene commissioner may direct that
124 the individual be detained or taken into custody for the
125 purpose of an immediate examination by the designated
126 physician or psychologist. All such orders shall be di-
127 rected to the sheriff of the county or other appropriate
128 law-enforcement officer. After such examination has
129 been completed, the individual shall be released from
130 custody unless proceedings are instituted pursuant to
131 section three of this article.

132 (3) If the reports of the appointed physician or psy-
133 chologist do not confirm that the individual is mentally
134 ill, mentally retarded or addicted and might be harmful
135 to himself or others, then the proceedings for his in-
136 voluntary hospitalization shall be dismissed.

137 (g) *Rights of the individual at the final commitment*
138 *hearing; seven days' notice to counsel required.*

139 (1) The individual shall be present at the final commit-
140 ment hearing and he, the applicant and all persons
141 entitled to notice of such hearing shall be afforded an
142 opportunity to testify and to present and cross-examine
143 witnesses.

144 (2) In the event that the individual has not retained
145 counsel, the court or mental hygiene commissioner at
146 least six days prior to hearing shall appoint a competent
147 attorney, and shall inform the individual of the name,
148 address and telephone number of his appointed counsel.

149 (3) The individual shall have the right to have an
150 examination by an independent expert of his choice and
151 testimony from such expert as a medical witness on his
152 behalf. The cost of such independent expert shall be
153 borne by the individual unless he is indigent.

154 (4) The individual shall not be compelled to be a
155 witness against himself.

156 (h) *Duties of counsel representing individual; pay-*
157 *ment of counsel representing indigent.*

158 (1) The counsel representing an individual shall con-
159 duct a timely interview, make investigation and secure
160 appropriate witnesses, and shall be present at the hearing
161 and protect the interest of the individual.

162 (2) Any counsel representing an individual shall be
163 entitled to copies of all medical reports, psychiatric or
164 otherwise.

165 (3) The circuit court, by order of record, may allow
166 the attorney a reasonable fee not to exceed the amount
167 allowed for attorneys in defense of needy persons as
168 provided in article eleven, chapter fifty-one of this
169 code.

170 (i) *Conduct of hearing; receipt of evidence; no evi-*
171 *dentiary privilege; record of hearing.*

172 (1) The circuit court or mental hygiene commissioner
173 shall hear evidence from all interested parties in chamber,
174 including testimony from representatives of the com-
175 munity mental health facility.

176 (2) The circuit court or mental hygiene commissioner
177 shall receive all relevant and material evidence which
178 may be offered.

179 (3) The circuit court or mental hygiene commissioner
180 shall be bound by the rules of evidence except that
181 statements made to physicians or psychologists by the
182 individual may be admitted into evidence by the physi-
183 cian's or psychologist's testimony notwithstanding failure
184 to inform the individual that this statement may be used
185 against him. Any psychologist or physician testifying
186 shall bring all records pertaining to said individual to
187 said hearing. Such medical evidence obtained pursuant
188 to an examination under this section, or section two or
189 section three of this article, is not privileged information
190 for purposes of a hearing pursuant to this section.

191 (4) All final commitment proceedings shall be reported
192 or recorded, whether before the circuit court or mental
193 hygiene commissioner, and a transcript shall be made
194 available to the individual, his counsel or the prosecuting
195 attorney within thirty days, if the same is requested for

196 the purpose of further proceedings. In any case wherein
197 an indigent person intends to pursue further proceedings
198 the circuit court shall, by order entered of record,
199 authorize and direct the court reporter to furnish a tran-
200 script of the hearings.

201 (j) *Requisite findings by the court.*

202 (1) Upon completion of the final commitment hearing,
203 and the evidence presented therein, the circuit court or
204 mental hygiene commissioner shall make findings as
205 to whether or not the individual is mentally ill, re-
206 tardated or addicted and because of his illness, retardation
207 or addiction is likely to cause serious harm to himself or
208 to others if allowed to remain at liberty and is a resident
209 of the county in which the hearing is held or currently is
210 a patient at a mental health facility in such county.

211 (2) The circuit court or mental hygiene commissioner
212 shall also make a finding as to whether or not there is
213 a less restrictive alternative than commitment appro-
214 priate for the individual. The burden of proof of the
215 lack of a less restrictive alternative than commitment
216 shall be on the person or persons seeking the commit-
217 ment of the individual.

218 (3) The findings of fact shall be incorporated into the
219 order entered by the circuit court and must be based
220 upon clear, cogent and convincing proof.

221 (k) *Orders issued pursuant to final commitment hear-*
222 *ing; entry of order; change in order of court; expiration*
223 *of order.*

224 (1) Upon the requisite findings, the circuit court may
225 order the individual to a mental health facility for an
226 indeterminate period or for a temporary observatory
227 period not exceeding six months.

228 (2) The individual shall not be detained in a mental
229 health facility for a period in excess of ten days after a
230 final commitment hearing pursuant to this section unless
231 an order has been entered and received by the facility.

232 (3) If the order pursuant to a final commitment hear-

233 ing is for a temporary observation period, the circuit
234 court or mental hygiene commissioner may, at any time
235 prior to the expiration of such period on the basis of
236 a report by the chief medical officer of the mental health
237 facility in which the patient is confined, hold another
238 hearing pursuant to the terms of this section and in the
239 same manner as the hearing was held as if it were an
240 original petition for involuntary hospitalization, to de-
241 termine whether the original order for a temporary obser-
242 vation period should be modified or changed to an order
243 of indeterminate hospitalization of the patient. At the
244 conclusion of the hearing, the circuit court shall order
245 indeterminate hospitalization of the patient or dismissal
246 of the proceedings.

247 (4) An order for an indeterminate period shall expire
248 of its own terms at the expiration of two years from the
249 date of the last order of commitment unless prior to
250 the expiration, the department of health, upon findings
251 based on an examination of the patient by a physician
252 or a psychologist, extends the order for indeterminate
253 hospitalization: *Provided*, That if the patient or his
254 counsel requests a hearing, then a hearing shall be held
255 by the mental hygiene commissioner; or by the circuit
256 court of the county as provided in subsection (a) of
257 this section.

258 (1) *Dismissal of proceedings.* If the circuit court or
259 mental hygiene commissioner finds that the individual
260 is not mentally ill, mentally retarded or addicted, the
261 proceedings shall be dismissed. If the circuit court or
262 mental hygiene commissioner finds that the individual
263 is mentally ill, mentally retarded or addicted but is not
264 because of such illness, retardation or addiction likely
265 to cause serious harm to himself or others if allowed
266 to remain at liberty, the proceedings shall be dismissed.

267 (m) *Immediate notification of order of hospitalization.*
268 The clerk of the circuit court in which an order directing
269 hospitalization is entered, if not in the county of the
270 individual's residence, shall immediately upon entry
271 thereof forward a certified copy of same to the clerk of

272 the circuit court of the county of which the individual is a
273 resident.

274 (n) *Consideration of transcript by circuit court of*
275 *county of individual's residence; order of hospitalization;*
276 *execution of order.*

277 (1) If the circuit court or mental hygiene commis-
278 sioner is satisfied that hospitalization should be ordered
279 but finds that the individual is not a resident of the
280 county in which the hearing is held, and the individual
281 is not currently a resident of a mental health facility,
282 a transcript of the evidence adduced at the final com-
283 mitment hearing of such individual, certified by the clerk
284 of the circuit court, shall forthwith be forwarded to the
285 clerk of the circuit court of the county of which such
286 individual is a resident, who shall immediately present
287 such transcript to the circuit court or mental hygiene
288 commissioner of said county.

289 (2) If the circuit court or mental hygiene commis-
290 sioner of the county of the residence of the individual
291 is satisfied from the evidence contained in such transcript
292 that such individual should be hospitalized as determined
293 by the standard set forth above, the circuit court shall
294 order the appropriate hospitalization as though the indi-
295 vidual had been brought before the circuit court or its
296 mental hygiene commissioner in the first instance.

297 (3) This order shall be transmitted forthwith to the
298 clerk of the circuit court of the county in which the
299 hearing was held who shall execute said order promptly.

300 (o) *Order of custody to responsible person.* In lieu
301 of ordering the patient to a mental health facility, the
302 circuit court may order the individual delivered to some
303 responsible person who will agree to take care of the
304 individual and the circuit court may take from such
305 responsible person a bond in an amount to be determined
306 by the circuit court with condition to restrain and take
307 proper care of such individual until further order of the
308 court.

309 (p) *Individual not a resident of this state.* If the indi-

310 vidual found to be mentally ill, mentally retarded or
311 addicted by the circuit court or mental hygiene com-
312 missioner is a resident of another state, this information
313 shall be forthwith given to the director of health, who
314 shall make appropriate arrangements for his transfer to
315 the state of his residence conditioned on the agreement
316 of the individual except as qualified by the interstate
317 compact on mental health.

318 (q) *Report to the director of health.*

319 (1) The chief medical officer of a mental health facility
320 admitting a patient pursuant to proceedings under this
321 section shall forthwith make a report of such admission
322 to the director of health.

323 (2) Whenever an individual is released from custody
324 due to the failure of an employee of a mental health
325 facility to comply with the time requirements of this
326 article, the chief medical officer of such mental health
327 facility shall forthwith after the release of the individual
328 make a report to the director of health of the failure to
329 comply.

330 (r) *Payment of some expenses by the state; mental*
331 *hygiene fund established; expenses paid by the county*
332 *commission.*

333 (1) The state shall pay the attorney fees, court re-
334 porter fees and commissioner fees out of a special fund
335 to be established within the supreme court of appeals
336 of this state, to be known as the "mental hygiene fund."

337 (2) The county commission shall pay out of the county
338 treasury all other expenses incurred in the hearings
339 conducted under the provisions of this article whether
340 or not hospitalization is ordered, including any fee
341 allowed by the circuit court by order entered of record
342 for any physician, psychologist and witness called by the
343 indigent individual.

**ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CON-
VICTED OF A CRIME.**

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's compe-

2 tency to stand trial, the defendant shall be present and he
3 shall have the right to be presented by counsel and in-
4 troduce evidence and cross-examine witnesses. The de-
5 fendant shall be afforded timely and adequate notice of
6 the issues of the hearing and shall have access to a
7 summary of the medical evidence to be presented by the
8 state. The defendant shall have the right to an examina-
9 tion by an independent expert of his choice and testimony
10 from such expert as a medical witness on his behalf. All
11 rights generally afforded a defendant in criminal pro-
12 ceedings shall be afforded to a defendant in such compe-
13 tency proceedings.

14 (b) At the termination of such hearing the court of
15 record shall make a finding of fact upon a preponderance
16 of the evidence as to the individual's competency to stand
17 trial based on whether or not the individual is capable of
18 participating substantially in his defense and understand-
19 ing the nature and consequences of a criminal trial. If the
20 individual is found competent, the court of record shall
21 forthwith proceed with the criminal proceedings. If the
22 individual is found incompetent to stand trial, the court of
23 record shall upon the evidence make further findings as
24 to whether or not there is a substantial likelihood that the
25 individual will attain competency within the next ensuing
26 six months, and if the court of record so finds, the indi-
27 vidual may be committed to a mental health facility for
28 an improvement period not to exceed six months. If re-
29 quested by the chief medical officer of the mental health
30 facility on the grounds that additional time is necessary
31 for the individual to attain competency, the court of rec-
32 ord may, prior to the termination of the six-month period,
33 extend the period for an additional three months. Within
34 ten days of the termination of such period, the court of
35 record shall ascertain by hearing in accordance with sub-
36 section (a) of this section whether or not the individual
37 has attained competency to stand trial.

38 (c) If the individual is indicted for a misdemeanor and
39 is found to be incompetent to stand trial with no substan-
40 tial likelihood of obtaining competency, or if after such
41 improvement period the individual is found to be incom-

42 petent to stand trial, the criminal charges shall be dis-
43 missed. The dismissal order may be stayed for ten days
44 to allow civil commitment proceedings to be instituted
45 pursuant to article five of this chapter.

46 (d) If the individual is a defendant in a felony case
47 and is found initially to be incompetent to stand trial
48 with no substantial likelihood of obtaining competency,
49 or if after such improvement period the individual is
50 found to be incompetent to stand trial, then the director
51 of health shall institute against the individual civil com-
52 mitment proceedings pursuant to article five of this chap-
53 ter and the criminal charges shall be dismissed. If the
54 individual is committed pursuant to article five of this
55 chapter, then the director of health shall cause the indi-
56 vidual's competency to stand trial to be reviewed every six
57 months during the period of his civil commitment, and
58 shall report his findings to the court of record after every
59 such review. If the director of health finds that the indi-
60 vidual is competent to stand trial, then a hearing shall
61 be held by the court of record in accordance with subsec-
62 tion (a) of this section. If, after such hearing, the indi-
63 vidual is found competent to stand trial, he shall be tried;
64 if, after such hearing, the individual is found incompetent
65 to stand trial, he shall be recommitted for the period of
66 his commitment as ordered pursuant to article five of
67 this chapter, with mandatory review of his competency to
68 stand trial every six months in accordance with this sub-
69 section. If said individual becomes competent to stand
70 trial, the director of health shall notify the prosecuting
71 attorney of the county where the criminal charges were
72 brought against the individual.

CHAPTER 70

(S. B. 496—By Mr. Gainer)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter twenty of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; and to amend and re-enact section four, article one, chapter twenty-two of said code, all relating to directing the directors of the department of mines and department of natural resources to adopt programs, regulations and procedures to provide assistance to small coal operators; and permitting the use of certain funds therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter.

20. Natural Resources.

22. Mines and Minerals.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility; assistance to small operators; adoption of programs and regulations; officers and employees prohibited from engaging in certain activities.

1 Except as otherwise provided in section twenty-one of
2 this article, the department of natural resources is hereby
3 vested with jurisdiction over all aspects of surface mining
4 and with jurisdiction and control over land, water and
5 soil aspects pertaining to surface-mining operations, and
6 the restoration and reclamation of lands surface mined
7 and areas affected thereby.

8 The Legislature finds that, although surface mining
9 provides much needed employment and has produced
10 good safety records, unregulated surface mining causes
11 soil erosion, pyritic shales and materials, landslides,
12 noxious materials, stream pollution and accumulation of
13 stagnant water, increases the likelihood of floods and

14 slides, destroys the value of some lands for agricultural
15 purposes and some lands for recreational purposes, de-
16 stroyes aesthetic values, counteracts efforts for the con-
17 servation of soil, water and other natural resources, and
18 destroys or impairs the health, safety, welfare and prop-
19 erty rights of the citizens of West Virginia, where proper
20 reclamation is not practiced.

21 The Legislature also finds that there are wide varia-
22 tions regarding location and terrain conditions surround-
23 ing and arising out of the surface mining of minerals,
24 primarily in topographical and geological conditions, and
25 by reason thereof, it is necessary to provide the most
26 effective, beneficial and equitable solution to the prob-
27 lems involved.

28 The Legislature further finds that authority should be
29 vested in the director of the department of natural re-
30 sources to administer and enforce the provisions of this
31 article.

32 The director of the department of natural resources
33 and the director of the department of mines shall co-
34 operate with respect to departmental programs and
35 records so as to effect an orderly and harmonious ad-
36 ministration of the provisions of this article. The director
37 of natural resources may avail himself of any services
38 which may be provided by other state agencies in this
39 state and other states or by agencies of the federal
40 government, and may reasonably compensate them for
41 such services. He may also receive any federal funds,
42 state funds or any other funds for the reclamation of
43 land affected by surface mining. The department of
44 mines and all departments, schools and colleges of West
45 Virginia University shall cooperate fully with the divi-
46 sion of reclamation of the department of natural re-
47 sources in administering and enforcing the provisions
48 of this article.

49 The directors of the departments of mines and natural
50 resources shall adopt programs, regulations, and proce-

51 dures designed to assist the small coal operator with
52 obtaining permit and meeting the environmental protec-
53 tion performance standards for surface and underground
54 coal mining operations within the state under the pro-
55 visions of section 507(c) of the Federal Surface Mining
56 Control and Reclamation Act of 1977, Public Law 95-87,
57 and regulations promulgated pursuant thereto; and, in
58 the discretion of the director of the department of natural
59 resources, to assist such small operators in meeting such
60 other standards of such act within the limits of available
61 funds therefor: *Provided*, That the director of the depart-
62 ment of natural resources shall promulgate rules and
63 regulations identifying the scope and extent of assistance
64 and services to be provided in addition to those under
65 said section 507(c). For the purposes of this section a
66 small coal operator is one who is anticipated to mine less
67 than two hundred thousand tons per year, but the depart-
68 ment in determining tonnage shall consider wholly owned
69 subsidiaries to be the same operation as the parent cor-
70 poration. In the absence of other state or federal funds
71 available for the administration of such programs and
72 procedures, the director of the department of natural
73 resources may utilize the surface reclamation fund for
74 such purpose.

75 No public officer or employee in the department of
76 natural resources, the department of mines, or the office
77 of attorney general, having any responsibility or duty
78 either directly or of a supervisory nature with respect
79 to the administration or enforcement of this article shall
80 (1) engage in surface mining as a sole proprietor or as a
81 partner or (2) be an officer, director, stockholder, owner
82 or part owner of any corporation or other business entity
83 engaged in surface mining or (3) be employed as an
84 attorney, agent or in any other capacity by any person,
85 partnership, firm, association, trust or corporation en-
86 gaged in surface mining. Any violation of this paragraph
87 by any such public officer or employee shall constitute
88 grounds for his removal from office or dismissal from his
89 employment, as the case may be.

CHAPTER 22. MINES AND MINERALS.**ARTICLE 1. ADMINISTRATION; ENFORCEMENT.****§22-1-4. Director of the department of mines—Powers and duties.**

1 The director of the department of mines shall have full
2 charge of the department. He shall have the power and
3 duty to:

4 (1) Supervise and direct the execution and enforce-
5 ment of the provisions of this chapter.

6 (2) Appoint a deputy director of the department of
7 mines, fix his compensation and prescribe his powers and
8 duties.

9 (3) Employ such assistants, clerks, stenographers and
10 other employees as may be necessary to fully and effec-
11 tively carry out the provisions of this law and fix their
12 compensation, except as otherwise provided in this article.

13 (4) Employ mine inspectors, and assign them to divi-
14 sions or districts in accordance with the provisions of
15 section seven of this article as may be necessary to fully
16 and effectively carry out the provisions of this law, in-
17 cluding the hiring and training of inspectors for the spe-
18 cialized requirements of surface mining, shaft and slope
19 sinking, and surface installations and to supervise and
20 direct such mine inspectors in the performance of their
21 duties.

22 (5) Suspend, for good cause, any mine inspector with-
23 out compensation for a period not exceeding thirty days
24 in any calendar year.

25 (6) Prepare report forms to be used by mine in-
26 spectors in making their findings, orders and notices,
27 upon inspections made in accordance with this chapter.

28 (7) Hear and determine applications made by mine
29 operators for the annulment or revision of orders made
30 by mine inspectors, and to make inspections of mines, in
31 accordance with the provisions of this article.

32 (8) Cause a properly indexed permanent and public
33 record to be kept of all inspections made by himself or
34 by mine inspectors.

35 (9) Make annually a full and complete written report
36 of the administration of his department to the governor
37 and the Legislature of the state for the year ending the
38 thirtieth day of June. Such report shall include the num-
39 ber of visits and inspections of mines in the state by mine
40 inspectors, the quantity of coal, coke and other minerals
41 (including oil and gas) produced in the state, the number
42 of men employed, number of mines in operation, sta-
43 tistics with regard to health and safety of persons work-
44 ing in the mines including the causes of injuries and
45 deaths, improvements made, prosecutions, the total funds
46 of the department from all sources identifying each
47 source of such funds, the expenditures of the department,
48 the surplus or deficit of the department at the beginning
49 and end of the year, the amount of fines collected, the
50 amount of fines imposed, the value of fines pending, the
51 number and type of violations found, the amount of fines
52 imposed, levied and turned over for collection, the total
53 amount of fines levied but not paid during the prior
54 year, the titles and salaries of all inspectors and other
55 officials of the department, the number of inspections
56 made by each inspector, the number and type of viola-
57 tions found by each inspector: *Provided*, That no inspec-
58 tor shall be identified by name in this report. Such
59 reports shall be filed with the governor and the Legisla-
60 ture on or before the thirty-first day of December of
61 the same year for which it was made, and shall upon
62 proper authority be printed and distributed to interested
63 persons.

64 (10) Call or subpoena witnesses, for the purpose of
65 conducting hearings into mine fires, mine explosions or
66 any mine accident; to administer oaths and to require
67 production of any books, papers, records, or other docu-
68 ments relevant or material to the hearing. Any witness
69 so called or subpoenaed shall receive forty dollars per
70 diem and shall receive mileage at the rate of fifteen
71 cents for each mile actually traveled, which shall be

72 paid out of the state treasury upon a requisition upon the
73 state auditor, properly certified by such witness.

74 (11) Institute civil actions for relief, including
75 permanent or temporary injunctions, restraining orders,
76 or any other appropriate action in the appropriate federal
77 or state court whenever any operator or his agent violates
78 or fails or refuses to comply with any lawful order,
79 notice or decision issued by the director or his repre-
80 sentative.

81 (12) Perform all other duties which are expressly
82 imposed upon him by the provisions of this chapter.

83 (13) Make all records of the department open for
84 inspection of interested persons and the public.

85 (14) In conjunction with the director of the depart-
86 ment of natural resources, adopt programs, regulations
87 and procedures designed to assist the small coal oper-
88 ator with obtaining permits and meeting the environ-
89 mental protection performance standards for strip and
90 underground coal mining operations within the state.
91 For the purposes of this subdivision, a small coal operator
92 is one who is anticipated to mine less than two hundred
93 thousand tons per year, but the department in determin-
94 ing tonnage shall consider wholly owned subsidiaries to
95 be the same operation as the parent corporation.

CHAPTER 71

(Com. Sub. for H. B. 1404—By Mr. Speaker, Mr. See, and Mr. Tompkins)

[Passed March 8, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-b, relating to surface coal mining and reclamation operations and the surface effects of underground coal mining

operations; setting forth legislative findings, declarations and purpose; authorizing the director of the department of natural resources and the reclamation commission to prepare proposed legislation and proposed rules and regulations to conform the state's statutory and regulatory requirements regarding mining activities with the federal surface mining control and reclamation act of one thousand nine hundred seventy-seven, and any valid rule or regulation promulgated pursuant thereto or thereunder; requiring such director and reclamation commission to do such acts as may be required to assure that the state of West Virginia will timely assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations and the surface effects of underground coal mining operations in the state; requiring the director and the reclamation commission to submit such proposed legislation and proposed rules and regulations by a certain date to the joint committee on government and finance for its review of such proposed legislation and such proposed rules and regulations; requiring the joint committee on government and finance to report its recommendations with recommended legislation to the next session of the Legislature; expressing the intention of the Legislature to follow such recommendations and enact necessary legislation; providing that such proposed rules and regulations prepared by the director and the reclamation commission shall not become operative until made a part of an approved state program; providing that no state law or rule and regulation included in such state program shall be more stringent than or inconsistent with the requirements of the federal surface mining control and reclamation act or regulations promulgated pursuant thereto or thereunder; requiring the director to identify and report all existing statutes and rules and regulations more stringent than the federal act, including those which impair the competitive position of West Virginia coal and, if so, why they are reasonably necessary to state regulation; providing that if any provisions of federal law or rules and regulations regarding surface mining and reclamation or the surface effects of underground coal mining are amended, modified, affected or invalidated, the state program under which exclusive jurisdiction thereof is assumed shall be similarly applied and construed; and providing that expiration of expanded rule-making authority of

the director and the reclamation commission under section twenty-three-a, article six, chapter twenty of the code shall not affect valid rules and regulations promulgated under such 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-b, to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-23b. Legislative findings and purposes; expanded duties of director and reclamation commission; state program under the federal surface mining control and reclamation act of 1977.

1 (a) The Legislature hereby finds and declares that the
2 "Surface Mining Control and Reclamation Act of 1977," Pub-
3 lic Law 95-87, enacted by the Congress of the United States
4 and approved on the third day of August, one thousand nine
5 hundred seventy-seven, hereinafter in this section referred to as
6 the "federal surface mining act," establishes a nationwide pro-
7 gram of environmental requirements relating to surface coal
8 mining operations and the surface effects of underground
9 coal mining operations; that the federal surface mining act was
10 intended in part to equalize the regulatory requirements among
11 the states relating to surface mining operations and the surface
12 effects of underground coal mining operations and to ensure
13 competitive balance among producers and sellers of coal; that
14 the federal surface mining act provides for assistance to the
15 states in developing and implementing programs to achieve the
16 purposes thereof; that nothing in this section shall be construed
17 as an expression of approval of or satisfaction with the federal
18 surface mining act or any rule or regulation promulgated pur-
19 suant thereto or thereunder, so as to limit or affect any suit,
20 action or other proceeding brought to invalidate, set aside or
21 modify, in whole or in part, the federal surface mining act or
22 any rule or regulation promulgated pursuant thereto or there-
23 under; that because of the diversity in terrain and climate and
24 biologic, chemical and other physical conditions in and among

25 areas subject to mining operations, the primary governmental
26 responsibility for developing, authorizing, issuing and enforc-
27 ing regulations for mining and reclamation operations should
28 rest with the states; that the authority to regulate surface min-
29 ing and reclamation operations in the state has already been
30 vested in the department of natural resources and the reclama-
31 tion commission; that the laws and regulations of the state re-
32 lating to mining and reclamation operations are in many in-
33 stances at variance with the provisions of the federal surface
34 mining act and regulations promulgated pursuant thereto; that
35 under the federal surface mining act, and particularly section
36 five hundred three thereof, if the state desires to be the primary
37 governmental agency responsible for mining and reclamation
38 operations in the state, it must submit to the secretary of the
39 United States department of interior by the third day of August,
40 one thousand nine hundred seventy-nine, a state program which
41 demonstrates that the state has the capability of carrying out
42 the provisions of the federal surface mining act and meeting its
43 purposes; that if a state program is approved pursuant to the
44 provisions of the federal surface mining act, the state will as-
45 sume exclusive jurisdiction over the regulation of surface coal
46 mining and reclamation operations and the surface effects of
47 underground coal mining operations in the state; that if a state
48 program is not submitted to the secretary of the United States
49 department of interior by no later than the third day of Aug-
50 ust, one thousand nine hundred seventy-nine, and is not there-
51 after approved, the federal surface mining act provides that a
52 federal program will be implemented in the state no later than
53 the third day of June, one thousand nine hundred eighty; and
54 that it would be in the best interest of this state for this state
55 rather than the federal government to have primary govern-
56 mental responsibility for mining and reclamation operations
57 in this state.

58 (b) In view of the foregoing findings and declarations,
59 it is the purpose of this section to authorize the director of the
60 department of natural resources and the reclamation commis-
61 sion to undertake certain actions, including the preparation of
62 proposed legislation and proposed rules and regulations as more
63 specifically directed hereinafter; the submission of such pro-

64 posed legislation and proposed rules and regulations to the
65 joint committee on government and finance for its review;
66 and obtaining the necessary approvals of such state program,
67 all for the purpose of assuring that the state ultimately as-
68 sumes exclusive jurisdiction of the regulation of surface coal
69 mining and reclamation operations and the surface effects of
70 underground coal mining operations in the state as contem-
71 plated under and permitted by the federal surface mining act:
72 *Provided*, That no part of such state program shall require
73 standards more stringent than or inconsistent with those
74 contained in the federal surface mining act or any valid rule
75 or regulation promulgated pursuant thereto or thereunder:
76 *Provided, however*, That before any existing statute or rule
77 or regulation which is or may be more stringent than those
78 required by the federal surface mining act or any valid rule or
79 regulation promulgated pursuant thereto or thereunder is
80 changed or modified, the director shall, on or before the
81 thirty-first day of May, one thousand nine hundred seventy-
82 nine, identify and report (1) all existing statutes and rules and
83 regulations which are more stringent than the requirements of
84 the federal surface mining act or any valid rule or regulation
85 promulgated thereto or thereunder; (2) whether any such
86 existing statutes and rules and regulations substantially impair
87 the competitive position of West Virginia coal in the coal in-
88 dustry, and, if so, (3) why any such existing statutes and rules
89 and regulations are reasonably necessary to the regulation of
90 surface mining and reclamation or the surface effects of under-
91 ground coal mining.

92 (c) In addition to other powers, duties and authority of the
93 director and the reclamation commission provided elsewhere
94 in this code, the director and the reclamation commission, on
95 or before the third day of August, one thousand nine hundred
96 seventy-nine, shall prepare a state program for submission to
97 the federal office of surface mining; submit such state program
98 for approval as provided under the federal surface mining act;
99 and do all such further acts as may be required to assure that
100 this state will on or before the third day of June, one thousand
101 nine hundred eighty, assume exclusive jurisdiction over the
102 regulation of surface coal mining and reclamation operations
103 and the surface effects of underground coal mining operations

104 in the state as contemplated by the federal surface mining act:
105 *Provided*, That no part of such state program shall require
106 standards more stringent than or inconsistent with those con-
107 tained in the federal surface mining act or any valid rule or
108 regulation promulgated pursuant thereto or thereunder:
109 *Provided, however*, That before any existing statute or rule or
110 regulation which is or may be more stringent than those re-
111 quired by the federal surface mining act or any valid rule or
112 regulation promulgated pursuant thereto or thereunder is
113 changed or modified, the director shall, on or before the thirty-
114 first day of May, one thousand nine hundred seventy-nine,
115 identify and report (1) all existing statutes and rules and regu-
116 lations which are more stringent than the requirements of the
117 federal surface mining act or any valid rule or regulation pro-
118 mulgated thereto or thereunder; (2) whether any such existing
119 statutes and rules and regulations substantially impair the com-
120 petitive position of West Virginia coal in the coal industry, and,
121 if so, (3) why any such existing statutes and rules and regula-
122 tions are reasonably necessary to the regulation of surface
123 mining and reclamation or the surface effects of underground
124 coal mining.

125 (d) The state program required to be prepared pursuant to
126 the provisions of subsection (c) of this section or a proposal of
127 such program, shall be prepared and submitted to the joint
128 committee on government and finance no later than the thirty-
129 first day of May, one thousand nine hundred seventy-nine. It is
130 the intention of the Legislature that the joint committee on
131 government and finance shall cause the proposed legislation and
132 the proposed rules and regulations submitted to it to be re-
133 viewed to ensure compliance with the provisions of this section.
134 The director, the reclamation commission and the joint commit-
135 tee on government and finance shall work together to ensure
136 that proper proposed legislation and proposed rules and regula-
137 tions are developed and included in a comprehensive state pro-
138 gram and that such state program is timely submitted for ap-
139 proval as provided by the federal surface mining act. The joint
140 committee on government and finance may hold public hearings
141 where interested persons may comment upon any such pro-
142 posed legislation and proposed rules and regulations.

143 (e) The joint committee on government and finance shall
144 report to the next session of the Legislature on or before the
145 fourteenth day of January, one thousand nine hundred eighty,
146 its recommendations to ensure that the intent and purposes of
147 this section are fulfilled, together with a draft of any legislation
148 and rules and regulations necessary to effectuate its recom-
149 mendations. It is the intention of the Legislature by enacting
150 this section to enact legislation necessary to effectuate and carry
151 out the intent and purposes of this section and specifically to
152 grant to the director and the reclamation commission the au-
153 thority to promulgate the proposed rules and regulations, if by
154 so doing the comprehensive state program prepared as required
155 by and in accordance with the provisions of this section will be
156 finally approved as provided in the federal surface mining act.

157 (f) Notwithstanding anything to the contrary contained in
158 this code, the proposed rules and regulations prepared pur-
159 suant to the provisions of this section shall not become opera-
160 tive in this state until such time as the state program of which
161 they are a part shall have been approved by the secretary of
162 the United States department of interior and the state,
163 pursuant to such approval, has assumed exclusive jurisdiction
164 over the regulation of surface coal mining and reclamation
165 operations and the surface effects of underground mining oper-
166 ations as provided under the federal surface mining act. At the
167 time such rules and regulations become operative, any rules
168 and regulations theretofore promulgated by the director or the
169 reclamation commission for the purpose of regulation of sur-
170 face coal mining and reclamation operations or the surface ef-
171 fects of underground coal mining operations in this state shall,
172 to the extent that such prior rules and regulations are inconsis-
173 tent with such operative rules and regulations approved pur-
174 suant to the federal surface mining act, become inoperative,
175 null and void and no longer of any force and effect in this state.

176 (g) Notwithstanding any other provision of this code or any
177 rule or regulation promulgated by the director or the reclama-
178 tion commission, if the Congress or the United States depart-
179 ment of interior or any final judicial action amends, modifies,
180 affects or invalidates any provision of the federal surface min-
181 ing act or any rule or regulation promulgated pursuant thereto

182 or thereunder so as to change or eliminate deadlines, perfor-
183 mance standards, procedural requirements or any other pro-
184 vision thereof, the applicable provisions of any state law, rule
185 and regulation or program respecting surface mining and
186 reclamation operations and the surface effects of underground
187 coal mining operations shall be similarly applied and con-
188 strued.

189 (h) Any valid rules and regulations promulgated by the
190 director or the reclamation commission under section twenty-
191 three-a of this article and permits issued pursuant thereto shall
192 not be affected in any way by the expiration of rule-making
193 authority under section twenty-three-a.

CHAPTER 72

(Com. Sub. for H. B. 1003—By Mr. Bryan)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to establishing compensation and expenses for members of the board of coal mine health and safety other than the director of the department of mines.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-7. Compensation and expenses of board members.

1 Each member of the board, except the director of the de-
2 partment of mines, shall receive seventy-five dollars per diem

3 while actually engaged in the performance of the duties of the
4 board, but not more than eighteen hundred dollars in any one
5 fiscal year. Each such member shall be reimbursed for all
6 reasonable and necessary expenses actually incurred during
7 the performance of their duties, except that in the event the
8 expenses are paid, or are to be paid, by a third party, the
9 members shall not be reimbursed by the state. The reimburse-
10 ment shall be paid out of the state treasury upon a requisition
11 upon the state auditor, properly certified by the director of the
12 department of mines.

CHAPTER 73

(Com. Sub. for S. B. 558—By Mr. Rogers)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and nine, article nine, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the mobile home safety act generally; promulgation of rules and regulations requiring a dealer in mobile homes to install a smoke detection system in mobile homes offered for sale in this state by such dealer; making the sale of a mobile home not equipped with a smoke detection system by a dealer unlawful; and establishing criminal and civil penalties against a dealer in mobile homes for the sale of mobile homes in this state not equipped with a smoke detection system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. MOBILE HOME SAFETY ACT.

§21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations for installation of smoke detection system; additional rules and regulations; fees.

§21-9-4. Sale, rental or transfer of mobile home in violation of article prohibited; exceptions.

§21-9-9. Violation of article, rules or regulations; criminal and civil penalties.

21-9-3. Duties of department, adoption of safety standards for mobile homes; rules and regulations for installation of smoke detection system; additional rules and regulations; fees.

1 The department is hereby charged with the administra-
2 tion and enforcement of the provisions of this article and
3 shall promulgate and adopt a safety code, which shall
4 substantially conform to the national standards and any
5 amendments thereto. Nothing herein shall prevent the
6 department from adopting a safety code of more rigid
7 standards than those contained in the national standards.
8 The department shall also promulgate and adopt rules
9 and regulations requiring the installation of a smoke
10 detection system in any mobile home offered for sale in
11 this state by a dealer in mobile homes. The department
12 may adopt such other rules and regulations as it may
13 deem necessary and appropriate for the enforcement of
14 the provisions of this article.

15 All rules and regulations adopted by the department
16 pursuant to this article shall be so adopted and promul-
17 gated in accordance with the provisions of article three,
18 chapter twenty-nine-a of this code and the provisions of
19 said article three shall apply to this article to the same
20 extent as if said article three were set forth in extenso
21 herein. The department may, from time to time, adopt
22 such revisions in the safety code, as well as in any other
23 rules and regulations adopted by it, as it deems necessary
24 to protect the health, safety and welfare of the public
25 against unsafe and substandard mobile homes.

26 The department shall collect a fee of five dollars for
27 each seal issued by it, pursuant to section five of this
28 article which shall be collected from each mobile home
29 manufacturer. All sums collected by the department pur-
30 suant to this article shall be paid into the treasury of the
31 state.

§21-9-4. Sale, rental or transfer of mobile home in violation of article prohibited; exceptions.

1 It shall be unlawful, from and after the effective date
2 of this article, for any person to rent, sell, transfer or
3 lease in this state or offer for rent, sale, transfer or lease
4 in this state any mobile home unless such mobile home
5 complies with the safety code and other rules and regu-
6 lations adopted and promulgated by the department, nor
7 shall any person so rent, sell, transfer or lease any such
8 mobile home in this state unless it bears a seal issued by
9 the department pursuant to section five of this article
10 evidencing certification of the manufacturer that the mo-
11 bile home so sold, rented, transferred or leased complies
12 with the safety code and the other provisions of this ar-
13 ticle: *Provided*, That the provisions of this article dealing
14 with the installation of smoke detection systems shall
15 apply only to dealers in mobile homes in this state.

§21-9-9. Violation of article, rules or regulations; criminal and civil penalties.

1 (a) Any person, dealer or manufacturer who violates
2 any of the provisions of this article shall be guilty of a
3 misdemeanor, and, upon conviction thereof, shall be fined
4 not less than one hundred dollars nor more than one
5 thousand dollars, or imprisoned in the county jail for a
6 term not to exceed one year, or both such fine and im-
7 prisonment. Each sale of a mobile home in violation of
8 the provisions of this article or of such rules and regula-
9 tions shall constitute a separate offense.

10 (b) If a dealer in mobile homes shall violate any of
11 the rules or regulations promulgated by the department
12 under the provisions of this article requiring the installa-
13 tion of a smoke detection system in any mobile home
14 offered for sale in this state by such dealer, the purchaser
15 of such mobile home has a cause of action to recover from
16 such dealer a penalty in an amount of five hundred dol-
17 lars, in addition to any other remedies to which he is
18 entitled.

CHAPTER 74

(Com. Sub. for S. B. 251—By Mr. Nelson)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-d, relating to governing and regulating the process by which films are to be distributed and selected for distribution to the theatres of this state; setting forth definitions; prohibiting blind bidding except with respect to certain theatres; requiring trade screenings; and establishing bidding procedures.

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 eleven-d, to read as follows:

ARTICLE 11D. THE MOTION PICTURE FAIR COMPETITION ACT.

§47-11D-1. Purpose.

§47-11D-2. Definitions.

§47-11D-3. Blind bidding prohibited; invitation to bid; provisions of article waived as to certain exhibitors.

§47-11D-4. Bidding procedures.

§47-11D-1. Purpose.

- 1 The purpose of this article is to establish fair and
- 2 open procedures for bidding and negotiating for the
- 3 exhibition of motion pictures within this state in order
- 4 to prevent unfair and deceptive acts or practices and un-
- 5 reasonable restraints of trade in the business of motion
- 6 picture distribution within this state; to promote fair
- 7 and effective competition in that business; and to
- 8 benefit the movie-going public by holding down admis-
- 9 sion prices to motion picture theatres, expanding the
- 10 choice of motion pictures available to the public, and
- 11 preventing exposure of the public to objectionable or

12 unsuitable motion pictures by ensuring that exhibitors
13 have the opportunity to view a picture before committing
14 themselves to exhibiting it.

§47-11D-2. Definitions.

1 When used in this article, unless the context indicates
2 otherwise:

3 (1) "Person" includes one or more individuals, partner-
4 ships, associations, societies, trusts or corporations.

5 (2) "Theatre" means any establishment in which
6 motion pictures are exhibited to the public regularly
7 for a charge.

8 (3) "Distributor" means any person engaged in the
9 business of distributing or supplying motion pictures to
10 exhibitors by rental, sale or licensing.

11 (4) "Exhibitor" means any person engaged in the
12 business of operating one or more theatres.

13 (5) "Exhibit" or "exhibition" means showing a motion
14 picture to the public for a charge.

15 (6) "Invitation to bid" means a written or oral solici-
16 tation or invitation by a distributor to one or more ex-
17 hibitors to bid or negotiate for the right to exhibit a
18 motion picture.

19 (7) "Bid" means a written or oral offer or proposal
20 by an exhibitor to a distributor, in response to an invi-
21 tation to bid or otherwise, stating the terms under which
22 the exhibitor will agree to exhibit a motion picture.

23 (8) "License agreement" means any contract, agree-
24 ment, understanding or condition between a distributor
25 and an exhibitor relating to the licensing or exhibition
26 of a motion picture by the exhibitor.

27 (9) "Trade screening" means a showing of a motion
28 picture by a distributor, which showing is open to any
29 of this state's exhibitors who are interested in exhibiting
30 the motion picture.

31 (10) "Blind bidding" means the bidding for, negotiat-

32 ing for, or offering or agreeing to terms for the licensing
33 or exhibition of a motion picture before that motion
34 picture has been trade screened for this state's exhib-
35 itors.

36 (11) "Run" means the continuous exhibition of a
37 motion picture in a defined geographic area for a speci-
38 fied period of time. A "first run" is the first exhibition
39 of a picture in the designated area, a "second run" is
40 the second exhibition and "subsequent runs" are all
41 exhibitions after the second run.

**§47-11D-3. Blind bidding prohibited; invitation to bid; provi-
sions of article waived as to certain exhibitors.**

1 (a) Blind bidding is hereby prohibited within this
2 state. No bids may be returnable, no negotiations for
3 the exhibition or licensing of a motion picture may take
4 place, and no license agreement or any of its terms may
5 be agreed to, for the exhibition of any motion picture
6 within this state before that motion picture has been
7 trade screened either within this state or, alternatively,
8 at the local exchange serving the geographic area within
9 this state for which bids have been invited.

10 (b) A distributor shall include in each invitation to
11 bid for a motion picture for exhibition within this state,
12 if such motion picture has not already been trade
13 screened within this state, the date, time and place of
14 the trade screening of the motion picture either within
15 this state or, alternatively, at the local exchange serving
16 the geographic area within this state for which bids
17 have been requested.

18 (c) A distributor shall provide reasonable and uniform
19 notice to all exhibitors in each competitive market within
20 this state of all trade screenings for that competitive
21 market of motion pictures he is distributing.

22 (d) The provisions of this article are waived with
23 respect to West Virginia exhibitors whose theatres are
24 located within twenty miles of a state line of a state
25 where a provision for prior trade screening before bidding
26 has not been adopted, so long as theatres exist within
27 the other state within twenty miles of the state line

28 between that state and West Virginia and no farther
29 than twenty miles from at least one West Virginia ex-
30 hibitor's theatre in the same competitive market. Any
31 other purported waiver of the requirements of this article
32 shall be void and unenforceable.

§47-11D-4. Bidding procedures.

1 If bids are solicited from exhibitors for the licensing
2 of a motion picture within this state, then:

3 (1) The invitation to bid shall specify (i) the num-
4 ber and length of runs for which the bid is being
5 solicited, whether it is a first, second or subsequent run,
6 and the geographic area for each run; (ii) the earliest
7 availability date of the motion picture; (iii) the names
8 of all exhibitors who are being solicited; (iv) the date
9 and hour the invitation to bid expires; and (v) the loca-
10 tion, including the address, where the bids will be opened,
11 which shall be within the state, or at the local exchange
12 serving the geographic area for which the bids have been
13 requested.

14 (2) All bids shall be submitted in writing and shall be
15 opened at the same time and in the presence of those
16 exhibitors, or their agents, who submitted bids and are
17 present at such time.

18 (3) After being opened, bids shall be subject to exam-
19 ination by any exhibitors, or their agents, who submitted
20 bids. Within seven business days after a bid is accepted,
21 the distributor shall notify in writing each exhibitor who
22 submitted a bid of the terms of the accepted bid and the
23 name of the winning bidder. Bids shall be kept on file at
24 the local exchange for a period of sixty days after ac-
25 ceptance, and may be examined by any competitive exhib-
26 itor during that period during the regular business
27 hours of the local exchange.

28 (4) Once bids are solicited for a particular run, the
29 distributor may subsequently license the picture only by
30 bidding for that run and shall solicit rebids if he does
31 not accept any of the submitted bids.

CHAPTER 75

(S. B. 563—Originating in the Senate Committee on Natural Resources)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve and fifteen, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transferring from the department of natural resources to the department of motor vehicles authority for motorboat registration and issuance of motorboat certificates of number; providing for use of fifty percent of fee proceeds to be used by the department of motor vehicles for administration of the program; providing for use of fifty percent of fee proceeds to be used by the department of natural resources for the state boating program; changing the annual license renewal requirement from a calendar year to fiscal year basis; removing authority to appoint county officials as license issuing agents; and authorizing the department of motor vehicles to deliver to motorboat dealers temporary certificates of number for issuance to purchasers.

Be it enacted by the Legislature of West Virginia:

That sections eleven, twelve and fifteen, 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.

PART II. MOTORBOATING.

- \$20-7-11. Motorboats and other terms defined.
- \$20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.
- \$20-7-15. Dealers' and manufacturers' certificate of number; applications and fees.

PART II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this
2 article, unless the context clearly requires a different
3 meaning:

4 (1) "Vessel" means every description of watercraft,
5 other than a seaplane on the water, used or capable of
6 being used as a means of transportation on water;

7 (2) "Motorboat" means any vessel propelled by an
8 electrical, steam, gas, diesel or other fuel propelled or
9 driven motor, whether or not such motor is the principal
10 source of propulsion, but shall not include a vessel which
11 has a valid marine document issued by the bureau of
12 customs of the United States government or any federal
13 agency successor thereto;

14 (3) "Owner" means a person, other than a lienholder,
15 having the property in or title to a motorboat. The term
16 includes a person entitled to the use or possession of a
17 motorboat subject to an interest in another person, re-
18 served or created by agreement and securing payment or
19 performance of an obligation, but the term excludes a
20 lessee under a lease not intended as security;

21 (4) "Commissioner" means the commissioner of the
22 department of motor vehicles; and

23 (5) "Director" means the director of the department of
24 natural resources.

**§20-7-12. Motorboat identification numbers required; applica-
tion for numbers; fee; displaying; reciprocity;
change of ownership; conformity with United
States regulations; records; renewal of certificate;
transfer of interest, abandonment, etc.; change of
address; unauthorized numbers; information to be
furnished assessors.**

1 Every motorboat, as herein defined, operating upon
2 public waters within the territorial limits of this state,
3 shall be numbered as herein provided:

4 (a) The owner of each motorboat requiring numbering
5 by this state shall file an application for a number with
6 the commissioner on forms approved by the department
7 of motor vehicles. The application shall be signed by the
8 owner of the motorboat and shall be accompanied by a
9 fee of five dollars if propelled by a motor of three or more
10 horsepower. There shall be no fee for motorboats pro-
11 pelled by motors of less than three horsepower. All such
12 fees, including those received under subdivision (b) of
13 this section, shall be deposited in the state treasury, and
14 fifty percent shall be credited to the department of motor
15 vehicles and shall be used and paid out upon order of the
16 commissioner solely for the administration of the certifi-
17 cate of number system. The remaining fifty percent shall
18 be credited to the department of natural resources and
19 shall be used and paid out upon order of the director
20 solely for the enforcement and safety education of the
21 state boating system. Upon receipt of the application
22 in approved form, the commissioner shall enter the same
23 upon the records of the department and issue to the
24 applicant a number awarded to the motorboat and the
25 name and address of the owner. The owner shall paint
26 on or attach to each side of the bow of the motorboat
27 the identification number in such manner as may be
28 prescribed by rules and regulations of the commissioner
29 in order that it may be clearly visible. The number shall
30 be maintained in legible condition. The certificate of
31 number shall be pocket size and shall be available at all
32 times for inspection on the motorboat for which issued,
33 whenever such motorboat is in operation.

34 (b) In order to permit a motorboat sold to a purchaser
35 by a dealer to be operated pending receipt of the cer-
36 tificate of number from the commissioner, the commis-
37 sioner may deliver to dealers, upon application therefor
38 and payment of one dollar for each, temporary certifi-
39 cates of number to in turn be issued to purchasers of
40 motorboats. Every person who is issued a temporary
41 certificate by a dealer shall, under the provisions of
42 subdivision (a) of this section, apply for an annual cer-
43 tificate of number no later than ten days from the date
44 of issuance of the temporary certificate. A temporary

45 certificate shall expire upon receipt of the annual cer-
46 tificate, upon rescission of the contract to purchase the
47 motorboat in question or upon the expiration of forty
48 days from the date of issuance, whichever shall first oc-
49 cur. It is unlawful for any dealer to issue any temporary
50 certificate knowingly containing any misstatement of fact,
51 or knowingly to insert any false information on the face
52 thereof. The commissioner may, by rule or regulation,
53 prescribe such additional requirements upon such dealers
54 and purchasers as are consistent with the effective ad-
55 ministration of this section.

56 (c) The owner of any motorboat already covered by a
57 number in full force and effect which has been awarded
58 to it pursuant to then operative federal law or a federally
59 approved numbering system of another state shall record
60 the number prior to operating the motorboat on the wa-
61 ters of this state in excess of the sixty-day reciprocity
62 period provided for in section fourteen of this article.
63 Such recordation shall be in the manner and pursuant to
64 procedure required for the award of a number under sub-
65 division (a) of this section, except that no additional or
66 substitute number shall be issued.

67 (d) Should the ownership of a motorboat change, a
68 new application form with fee shall be filed with the
69 commissioner and a new certificate of number shall be
70 awarded in the same manner as provided for in an origi-
71 nal award of number.

72 (e) In the event that an agency of the United States
73 government shall have in force an overall system of
74 identification numbering for motorboats within the United
75 States, the numbering system employed pursuant to this
76 article by the department of motor vehicles shall be in
77 conformity therewith.

78 (f) All records of the director made or kept pursuant
79 to this section shall be transferred to the commissioner
80 and shall be maintained as public records.

81 (g) Such license shall be valid only until the last day
82 of June. If at the expiration of that date ownership has
83 remained unchanged, such owner shall, upon application

84 and payment of the proper annual fee, be granted a re-
85 newal of such certificate of number for an additional one-
86 year period.

87 (h) The owner shall furnish the commissioner notice
88 of the transfer of all or any part of an interest, other than
89 the creation of a security interest, in a motorboat num-
90 bered in this state pursuant to subdivisions (a) and (b)
91 of this section, or of the destruction or abandonment of
92 such motorboat, within fifteen days thereof. Such trans-
93 fer, destruction or abandonment shall terminate the cer-
94 tificate of number for such motorboat, except that in the
95 case of a transfer of a part interest which does not affect
96 the owner's right to operate such motorboat, such trans-
97 fer shall not terminate the certificate of number.

98 (i) Any holder of a certificate of number shall notify
99 the commissioner within fifteen days if his address no
100 longer conforms to the address appearing on the certifi-
101 cate and shall, as a part of such notification, furnish the
102 commissioner with his new address. The commissioner
103 may provide rules and regulations for the surrender of
104 the certificate bearing the former address and its replace-
105 ment with a certificate bearing the new address or for
106 the alteration of an outstanding certificate to show the
107 new address of the holder.

108 (j) No number other than the number awarded to a
109 motorboat or granted reciprocity pursuant to this article
110 shall be painted, attached or otherwise displayed on
111 either side of the bow of such motorboat.

112 (k) It shall be the duty of the commissioner on or
113 before the thirtieth day of August of each year, commenc-
114 ing with the year one thousand nine hundred eighty, to
115 forward to the assessor of each county a list of the names
116 and addresses of all persons, firms and corporations own-
117 ing vessels and operating the same or other boats regis-
118 tered with the commissioner under the provisions of this
119 article. In furnishing this information to each county
120 assessor, the commissioner shall include such information
121 as to make, model, value and cost price of such vessels

122 and other equipment required to be registered for use by
123 said owner or operator thereof under the provisions of
124 this article: *Provided*, That the commissioner need not
125 furnish such information to the assessor if the cost price
126 of such vessel does not exceed two hundred dollars or the
127 cost of the motor does not exceed one hundred seventy-
128 five dollars. In order to deal equitably with overlapping
129 license periods, the commissioner may issue a six months'
130 license from the period January, one thousand nine hun-
131 dred eighty through June, one thousand nine hundred
132 eighty. The fee shall be one half of the annual fee.

133 (1) No person shall operate an unlicensed motorboat
134 upon any waters of this state without first acquiring such
135 certificate of number or license as required by law.

**§20-7-15. Dealers' and manufacturers' certificate of number;
applications and fees.**

1 Dealers' and manufacturers' certificate of number,
2 containing the word "manufacturer" or "dealer," as ap-
3 propriate, may be used in connection with the operation
4 of any motorboat in the possession of such dealer or
5 manufacturer, when the boat is being used for demon-
6 strative purposes. Application for a dealer's or manu-
7 facturer's certificate of number shall be made upon a form
8 provided by the commissioner and shall contain such
9 information as may be required by the commissioner.
10 Upon receipt of the application and upon payment of a
11 fee of five dollars for the initial certificate of number, and
12 five dollars for each additional certificate of number, the
13 commissioner shall issue to the applicant a manufactur-
14 er's or dealer's certificate of number which shall contain
15 the word "manufacturer" or "dealer" in lieu of a descrip-
16 tion of the boat. The manufacturer or dealer may have
17 the number awarded to him printed upon or attached to
18 a removable sign or signs to be temporarily but firmly
19 mounted upon or attached to the boat being demon-
20 strated, so long as the display meets the requirements of
21 the provisions of this article and regulations issued here-
22 under.

CHAPTER 76

(S. B. 213—By Mr. Steptoe)

[Passed February 16, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that an owner of any truck, truck tractor or road tractor paint or stencil the registered gross vehicle weight on the side of such vehicle.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-11. Registration of vehicles according to permissible gross weight.

1 The commissioner, upon registering any truck, truck
2 tractor or road tractor, under the laws of this state, may
3 require such information and may make such investiga-
4 tion or test as necessary to determine whether such
5 motor vehicle may safely be operated upon the highways
6 in compliance with all the provisions of law relating to
7 such vehicles. Every such vehicle shall be registered with
8 a permissible gross weight under which the vehicle can
9 safely be operated upon the highways, which weight may
10 not exceed the limitations set forth in chapter seven-
11 teen-c of this code.

12 The commissioner shall include on the registration card
13 issued for every such motor vehicle the gross weight for
14 which it is registered, and if it is a motor vehicle to be
15 used for propelling other vehicles, a separate listing of
16 the total permissible gross weight of such motor vehicle
17 and other vehicles to be propelled by it shall be included.
18 The commissioner shall also cause to be printed or

19 stamped upon the registration card a statement that the
20 vehicle although registered for the gross weight appear-
21 ing on the registration card is subject to the axle load
22 limit set forth in chapter seventeen-c of this code.

CHAPTER 77

(S. B. 94—By Mr. Colombo)

[Passed February 28, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special restrictions on lamps on motor vehicles; authorizing members of volunteer ambulance services or duly chartered rescue squads to have red flashing warning lights on their Class A vehicles under certain conditions; and restricting tow trucks and wreckers to use of amber or yellow flashing warning lights.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, 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-15-26. Special restrictions on lamps.

- 1 (a) Any lighted lamp or illuminating device upon a
2 motor vehicle other than head lamps, spot lamps, auxiliary
3 lamps or flashing front-direction signals which projects
4 a beam of light of an intensity greater than three hundred
5 candlepower shall be so directed that no part of the beam
6 will strike the level of the roadway on which the vehicle
7 stands at a distance of more than seventy-five feet from
8 the vehicle.
- 9 (b) No person shall drive or move any vehicle or

10 equipment upon any highway with any lamp or device
11 thereon displaying other than a white or amber light
12 visible from directly in front of the center thereof except
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing
15 lights are prohibited on motor vehicles, except on an
16 authorized emergency vehicle, school bus, snow removal
17 equipment or on any vehicle as a means for indicating
18 right or left turn, or on any vehicle as a means of indi-
19 cating the same is disabled or otherwise stopped for an
20 emergency.

21 (d) Notwithstanding any other provisions of this
22 chapter, the following color of flashing warning lights are
23 restricted for the use of the type of vehicle designated:

24 (1) Blue flashing warning lights are restricted to
25 police vehicles, except as authorized by section twenty-
26 seven of this article.

27 (2) Except as authorized by sections nineteen and
28 twenty-seven of this article, red flashing warning lights
29 are restricted to ambulances, fire-fighting vehicles, school
30 buses, Class A vehicles, as defined by section one, article
31 ten, chapter seventeen-a of this code, of those volunteer
32 firemen who are authorized by their fire chiefs to have
33 such lights and to Class A vehicles of members of
34 volunteer ambulance services or duly chartered rescue
35 squads who are authorized by their respective chiefs to
36 have such lights: *Provided*, That red flashing warning
37 lights attached to such Class A vehicles may be operated
38 only when responding to or engaged in handling an
39 emergency requiring the attention of such volunteer
40 firemen or members of such volunteer ambulance services
41 or chartered rescue squads.

42 (3) All other emergency vehicles, including tow
43 trucks and wreckers, authorized by this chapter and by
44 section twenty-seven of this article shall be restricted to
45 amber or yellow flashing warning lights.

46 It shall be unlawful for flashing warning lights of an
47 unauthorized color to be installed or used on a vehicle

48 other than as specified in this section, except that a police
 49 vehicle may be equipped with either or both blue or red
 50 warning lights.

CHAPTER 78

(Com. Sub. for H. B. 767—By Mr. Scott and Mr. Chambers)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter seventen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring proof of motor vehicle financial responsibility upon certain convictions; and prohibiting suspension or revocation of vehicle registration under certain conditions when driver's license has been suspended or revoked.

Be it enacted by the Legislature of West Virginia:

That section one, article four, 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 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-1. Proof required upon certain convictions.

1 (a) Except as provided in section six, article four, chapter
 2 seventeen-d of this code, the commissioner, under any law of
 3 this state, shall not suspend or revoke the registration of any
 4 person, when the suspension or revocation of the driver's
 5 license was made pursuant to the provisions of section one,
 6 article one-a, or section five, article three, or section three,
 7 article four, all of chapter seventeen-b of this code, or section
 8 eight, article six, chapter seventeen-c of this code.

9 (b) The suspension or revocation hereinbefore required
 10 shall remain in effect and the commissioner shall not issue to
 11 such person any new or renewal of license or register or re-

12 register in the name of such person as owner any such vehicle
13 until permitted under the motor vehicle laws of this state, and
14 not then unless and until such person shall give and thereafter
15 maintain proof of financial responsibility.

16 (c) If a person has no license, but by final order or judg-
17 ment is convicted of or forfeits any bail or collateral deposited
18 to secure an appearance for trial for any offense requiring the
19 suspension or revocation of license, no license shall be there-
20 after issued to such person and no vehicle shall thereafter be
21 registered in the name of such person as owner unless he shall
22 give and thereafter maintain proof of financial responsibility.

23 (d) Whenever the commissioner suspends or revokes a non-
24 resident's operating privilege by reason of a conviction or for-
25 feiture of bail, such privilege shall remain so suspended or
26 revoked unless such person shall have previously given or shall
27 immediately give and thereafter maintain proof of financial
28 responsibility.

29 (e) If by final order or judgment a person is convicted of or
30 forfeits any bail or collateral deposited to secure an appearance
31 for trial for driving a motor vehicle upon the highways without
32 being licensed to do so; and it appears from the records of the
33 department that such conviction or forfeiture is the second
34 conviction or forfeiture for this charge, no license shall be
35 thereafter issued to such person unless he shall give and there-
36 after maintain for one year proof of financial responsibility.

CHAPTER 79

(Com. Sub. for H. B. 855—By Mr. Wright and Mr. Scott)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, allowing Class III cities to establish and maintain an "employees retirement and benefit fund."

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-two, 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 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.

§8-22-2. Class I, II and III cities empowered and authorized to establish and maintain "employees retirement and benefit fund" or to maintain such fund heretofore established.

1 Every Class I, II and III city which is not a participating
2 public employer in the said West Virginia public employees re-
3 tirement system is hereby empowered and authorized to and
4 may establish and maintain an "employees retirement and
5 benefit fund" in accordance with the provisions of this section
6 two and sections three through fourteen of this article. Any
7 Class I, II or III city which has heretofore established such a
8 fund in accordance with the acts of the Legislature referred
9 to in section fifteen of this article may continue to maintain
10 said fund in accordance with the provisions of this section two
11 and sections three through fourteen of this article, or said acts,
12 as specified in said section fifteen.

CHAPTER 80

(S. B. 100—By Mr. Oates)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring that a quorum be present in order to conduct a

planning commission meeting and authorizing official action by a majority of the members present at a planning commission meeting in lieu of the previously required majority of all members of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. PLANNING AND ZONING.

§8-24-9. Quorum.

1 In order to conduct a commission meeting, a quorum of
2 the members must be present. A majority of the members
3 of a commission shall constitute a quorum. No action of a
4 commission shall be official unless authorized by a ma-
5 jority of the members present at a regular or properly
6 called special meeting.

CHAPTER 81

(H. B. 900—By Mr. Speaker, Mr. See, and Mr. Milleson)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including in the public policy of the state with respect to water pollution control that reasonable standards of water purity and quality are maintained consistent with the maintenance and expansion of agriculture.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. WATER POLLUTION CONTROL ACT.**PART I. GENERAL PROVISIONS AND PUBLIC POLICY.****§20-5A-1. Declaration of policy.**

1 It is declared to be the public policy of the state of West
2 Virginia to maintain reasonable standards of purity and
3 quality of the water of the state consistent with (1) public
4 health and public enjoyment thereof; (2) the propagation and
5 protection of animal, bird, fish, aquatic and plant life; and
6 (3) the expansion of employment opportunities, maintenance
7 and expansion of agriculture and the provision of a permanent
8 foundation for healthy industrial development.

CHAPTER 82

(H. B. 715—By Mr. Caudle)

[Passed March 6, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nursing and personal care homes; definitions; and deleting the definition of "mental impairment" from the definitions as used in article five-c.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.**§16-5C-2. Definitions.**

1 As used in this article, unless a different meaning appears
2 from the context:

3 (a) The term "director" means the director of the West
4 Virginia state department of health or his designee;

5 (b) The term "facility" means any nursing home or personal

6 care home as defined in subdivisions (c) and (d) of this sec-
7 tion: *Provided*, That the care or treatment in a household,
8 whether for compensation or not, of any person related by
9 blood or marriage, within the degree of consanguinity of
10 second cousin to the head of the household, or his or her
11 spouse, may not be deemed to constitute a nursing home or
12 personal care home within the meaning of this article. Noth-
13 ing contained in this article shall apply to hospitals, as de-
14 fined under section one, article five-b of this chapter, or state
15 institutions as defined under section six; article one, chapter
16 twenty-seven or section three, article one, chapter twenty-five,
17 all of this code, or institutions operated for the treatment and
18 care of alcoholic patients, or offices of physicians, or hotels,
19 boarding homes or other similar places that furnish to their
20 guests only board and room, or extended care facilities operat-
21 ed in conjunction with a hospital;

22 (c) The term "nursing home" means any institution, resi-
23 dence or place, or any part or unit thereof, however named,
24 in this state which is advertised, offered, maintained or operat-
25 ed by the ownership or management, whether for a considera-
26 tion or not, for the express or implied purpose of providing
27 accommodations and care, for a period of more than twenty-
28 four hours, for three or more persons who are ill or otherwise
29 incapacitated and in need of nursing care due to physical or
30 mental impairment, or which provides services for the reha-
31 bilitation of persons who are convalescing from illness or in-
32 capacitation;

33 (d) The term "personal care home" means any institution,
34 residence or place, or any part or unit thereof, however named,
35 in this state which is advertised, offered, maintained or oper-
36 ated by the ownership or management, whether for a consider-
37 ation or not, for the express or implied purpose of providing
38 accommodations and personal assistance, for a period of more
39 than twenty-four hours, to six or more persons who are de-
40 pendent upon the services of others by reason of physical or
41 mental impairment but who do not require nursing care;

42 (e) The term "nursing care" means those procedures com-
43 monly employed in providing for the physical, emotional and
44 rehabilitational needs of the ill or otherwise incapacitated

45 which require technical skills and knowledge beyond that which
46 the untrained person possesses, including, but not limited to,
47 such procedures as: Irrigations; catheterization; application of
48 dressings; supervision of special diets; objective observation
49 of changes in patient condition as a means of analyzing and
50 determining nursing care required and the need for further
51 medical diagnosis and treatment; special procedure contribut-
52 ing to rehabilitation; administration of medication by any
53 method ordered by a physician such as hypodermically, rect-
54 ally, or orally and carrying out other treatments prescribed by
55 a physician which involve a like level of complexity and skill
56 in administration;

57 (f) The term "personal assistance" means personal services,
58 including, but not limited to, the following: Help in walking,
59 bathing, dressing, feeding, or getting in or out of bed, or super-
60 vision required because of the age or mental impairment of
61 the patient;

62 (g) The term "patient" means an individual under care in
63 a nursing home or personal care home;

64 (h) The term "sponsor" means the person or agency legally
65 responsible for the welfare and support of a patient;

66 (i) The term "person" means an individual and every form
67 of organization, whether incorporated or unincorporated, in-
68 cluding any partnership, corporation, trust, association or
69 political subdivision of the state.

70 The director may define in regulations any term used herein
71 which is not expressly defined.

CHAPTER 83

(S. B. 385—By Mr. Brotherton, Mr. President)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a and one-b,
article four, chapter twenty-two of the code of West Vir-

ginia, one thousand nine hundred thirty-one, as amended, all relating to the creation of an office of oil and gas within the department of mines; definitions; purposes; rules and regulations; administrator of the office of oil and gas; powers and duties; processing fee; public records; and eligibility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.

§22-4-1a. Office of oil and gas—purposes; rules and regulations; administration; appointment; powers and duties; public records.

§22-4-1b. Administrator—eligibility.

§22-4-1. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Casing" means a string or strings of pipe com-
4 monly placed in wells drilled for natural gas or petroleum
5 or both;

6 (b) "Cement" means hydraulic cement properly mixed
7 with water;

8 (c) "Chairman" means the chairman of the West Vir-
9 ginia shallow gas well review board as provided for in
10 section four, article four-b of this chapter;

11 (d) "Chief" means chief of the division of water re-
12 sources of the department of natural resources;

13 (e) "Coal operator" means any person or persons,
14 firm, partnership, partnership association or corporation
15 that proposes to or does operate a coal mine;

16 (f) "Coal seam" and "workable coal bed" are inter-
17 changeable terms and mean any seam of coal twenty
18 inches or more in thickness, unless a seam of less thick-
19 ness is being commercially worked, or can in the judg-

20 ment of the department foreseeably be commercially
21 worked and will require protection if wells are drilled
22 through it;

23 (g) "Deep well" means any well drilled and com-
24 pleted in a formation at or below the top of the upper-
25 most member of the "Onondaga Group" or at a depth
26 of or greater than six thousand feet, whichever is shal-
27 lower;

28 (h) "Department" or "department of mines" means,
29 for purposes of this article and articles five and seven
30 of this chapter, the office of oil and gas of the department
31 of mines.

32 (i) "Administrator" means the head of the office of oil
33 and gas of the department of mines and all references
34 to the "deputy director" shall be defined to mean the
35 administrator of the office of oil and gas.

36 (j) "Expanding cement" means any cement approved
37 by the office of oil and gas which expands during the
38 hardening process, including, but not limited to, regular
39 oil field cements with the proper additives;

40 (k) "Facility" means any facility utilized in the oil
41 and gas industry in this state and specifically named or
42 referred to in this article or in articles five or seven of
43 this chapter, other than a well or well site;

44 (l) "Gas" means all natural gas and all other fluid
45 hydrocarbons not defined as oil in subdivision (m) of
46 this section;

47 (m) "Oil" means natural crude oil or petroleum and
48 other hydrocarbons, regardless of gravity, which are
49 produced at the well in liquid form by ordinary produc-
50 tion methods and which are not the result of condensa-
51 tion of gas after it leaves the underground reservoirs;

52 (n) "Owner" when used with reference to any well,
53 shall include any person or persons, firm, partnership,
54 partnership association or corporation that owns, manages,
55 operates, controls or possesses such well as principal,
56 or as lessee or contractor, employee or agent of such
57 principal;

58 (o) "Owner" when used with reference to any coal
59 seam, shall include any person or persons who own,
60 lease or operate such coal seam;

61 (p) "Person" means any natural person, corporation,
62 firm, partnership, partnership association, venture, re-
63 ceiver, trustee, executor, administrator, guardian, fidu-
64 ciary or other representative of any kind, and includes
65 any government or any political subdivision or any
66 agency thereof;

67 (q) "Plat" means a map, drawing or print showing the
68 location of a well or wells as herein defined;

69 (r) "Review board" means the West Virginia shallow
70 gas well review board as provided for in section four,
71 article four-b of this chapter;

72 (s) "Safe mining through of a well" means the mining
73 of coal in a workable coal bed up to a well which pene-
74 trates such workable coal bed and through such well
75 so that the casing or plug in the well bore where the
76 well penetrates the workable coal bed is severed; -

77 (t) "Shallow well" means any gas well drilled and
78 completed in a formation above the top of the upper-
79 most member of the "Onondaga Group" or at a depth less
80 than six thousand feet, whichever is shallower;

81 (u) "Stimulate" means any action taken by well
82 operator to increase the inherent productivity of an oil
83 or gas well, including, but not limited to, fracturing,
84 shooting or acidizing, but excluding cleaning out, bailing
85 or workover operations;

86 (v) "Well" means any shaft or hole sunk, drilled,
87 bored or dug into the earth or into underground strata
88 for the extraction or injection or placement of any liquid
89 or gas, or any shaft or hole sunk or used in conjunction
90 with such extraction or injection or placement. The term
91 "well" does not include any shaft or hole sunk, drilled,
92 bored or dug into the earth for the sole purpose of core
93 drilling or pumping or extracting therefrom potable,
94 fresh or usable water for household, domestic, industrial,
95 agricultural or public use;

96 (w) "Well operator" or "operator" means any person
97 or persons, firm, partnership, partnership association or
98 corporation that proposes to or does locate, drill, operate
99 or abandon any well as herein defined; and

100 (x) "Office of oil and gas" or "office" means the office
101 of oil and gas within the department of mines charged
102 with the responsibility of administering the provisions
103 of chapter twenty-two, articles four, five and seven of
104 the code of West Virginia, one thousand nine hundred
105 thirty-one, as amended.

**§22-4-1a. Office of oil and gas—purposes; rules and regulations;
administration; appointment; powers and duties;
public records.**

1 (a) There is hereby created, under the jurisdiction of
2 the director of the department of mines, an office of oil
3 and gas which shall have as its purpose the supervision
4 of the execution and enforcement of matters related to
5 oil and gas set out in this article and in articles five and
6 seven of this chapter.

7 (b) The office of oil and gas is authorized to enact
8 rules and regulations necessary to effectuate the above
9 stated purposes.

10 (c) There shall be an employee of the office of oil
11 and gas whose title shall be "administrator of the office
12 of oil and gas" who shall be appointed by the director of
13 the department of mines to serve at the will and pleasure
14 of the director and whose salary shall be set by the
15 director. The administrator shall have full charge of
16 the oil and gas matters set out in this article and in
17 articles five and seven of this chapter, subject always to
18 the direct supervision and control of the director of the
19 department of mines. As such the administrator shall
20 have the power and duty to:

21 (1) Supervise and direct the activities of the office of
22 oil and gas and see that the purposes set forth in sub-
23 sections (a) and (b) of this section are carried out;

24 (2) Employ a supervising oil and gas inspector and not

25 more than twelve oil and gas inspectors upon approval
26 by the director;

27 (3) Supervise and direct such oil and gas inspectors
28 and supervising inspector in the performance of their
29 duties;

30 (4) Suspend for good cause any oil and gas inspector
31 or supervising inspector without compensation for a
32 period not exceeding thirty days in any calendar year;

33 (5) Prepare report forms to be used by oil and gas
34 inspectors or the supervising inspector in making their
35 findings, orders and notices, upon inspections made in
36 accordance with this chapter;

37 (6) Employ a hearing officer and such clerks, stenog-
38 raphers and other employees, as may be necessary to
39 carry out his duties and the purposes of the office of
40 oil and gas, and fix their compensation;

41 (7) Hear and determine applications made by owners,
42 well operators, and coal operators for the annulment or
43 revision of orders made by oil and gas inspectors or the
44 supervising inspector, and to make inspections, in ac-
45 cordance with the provisions of this article and articles
46 five and seven of this chapter;

47 (8) Cause a properly indexed permanent and public
48 record to be kept of all inspections made by himself
49 or by oil and gas inspectors or the supervising inspector;

50 (9) Make annually a full and complete written report
51 to the director of the department of mines in such form
52 and detail as the director may from time to time request,
53 so that the director can complete the preparation of the
54 director's annual report to the governor of the state;

55 (10) Conduct such research and studies as the director
56 shall deem necessary to aid in protecting the health and
57 safety of persons employed within or at potential or
58 existing oil or gas production fields within this state, to
59 improve drilling and production methods and to provide
60 for the more efficient protection and preservation of oil

61 and gas-bearing rock strata and property used in con-
62 nection therewith;

63 (11) Perform any and all acts necessary to carry out
64 and implement the state requirements established by
65 92 Statutes at Large 3352, et seq., the "Natural Gas Policy
66 Act of 1978," which are to be performed by a designated
67 state jurisdictional agency regarding determinations that
68 wells within the state qualify for a maximum lawful
69 price under certain categories of natural gas as set forth
70 by the provisions of the said "Natural Gas Policy Act of
71 1978";

72 (12) Collect a filing and processing fee of twenty-five
73 dollars for each well, for which a determination of quali-
74 fication to receive a maximum lawful price under the
75 provisions of the "Natural Gas Policy Act of 1978" is
76 sought from the administrator; all revenues from such
77 fees to be placed in the general revenue fund of the state;

78 (13) Perform all other duties which are expressly
79 imposed upon him by the provisions of this chapter, as
80 well as duties assigned to him by the director of the
81 department of mines.

82 (d) All records of the department shall be open to the
83 public.

§22-4-1b. Administrator—eligibility.

1 The administrator of the office of oil and gas shall be a
2 citizen of West Virginia, shall be a competent person of
3 good reputation and temperate habits and be a registered
4 professional engineer and shall have had at least ten
5 years' practical experience in the oil and gas industry.
6 A degree in geology or in mining or petroleum engineer-
7 ing shall be counted as two years' practical experience.
8 The administrator shall devote all of his time to his
9 duties, and shall not be directly or indirectly interested
10 financially in any oil or gas production or drilling or in
11 any coal mine in this state.

CHAPTER 84

(S. B. 307—By Mr. Hanlon and Mr. Jones)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article four, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; failure to sell oil or gas; demand for payment of delay rental; rebuttable presumption of intention to abandon well and well equipment; continuation or enforcement of certain oil or gas leases to be opposed to public policy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COVENANTS.

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

1 Except in the case where operations for the drilling of
2 a well are being conducted thereunder, any undeveloped
3 lease for oil and/or gas in this state hereafter executed in
4 which the consideration therein provided to be paid for
5 the privilege of postponing actual drilling or development
6 or for the holding of said lease without commencing op-
7 erations for the drilling of a well, commonly called delay
8 rental, has not been paid when due according to the terms
9 of such lease, or the terms of any other agreement be-
10 tween lessor and lessee, shall be null and void as to such

11 oil and/or gas unless payment thereof shall be made
12 within sixty days from the date upon which demand for
13 payment in full of such delay rental has been made by the
14 lessor upon the lessee therein, as hereinafter provided,
15 except in such cases where a bona fide dispute shall
16 exist between lessor and lessee as to any amount due or
17 entitlement thereto or any part thereof under such lease.

18 No person, firm, corporation, partnership or association
19 shall maintain any action or proceeding in the courts of
20 this state for the purpose of enforcing or perpetuating
21 during the term thereof any lease heretofore executed
22 covering oil and/or gas, as against the owner of such oil
23 and/or gas, or his subsequent lessee, if such person, firm,
24 corporation, partnership or association has failed to pay
25 to the lessor such delay rental in full when due according
26 to the terms thereof, for a period of sixty days after
27 demand for such payment has been made by the lessor
28 upon such lessee, as hereinafter provided.

29 The demand for payment referred to in the two pre-
30 ceding paragraphs shall be made by notice in writing and
31 shall be sufficient if served upon such person, firm, part-
32 nership, association, or corporation whether domestic or
33 foreign, whether engaged in business or dissolved, by
34 United States registered mail, return receipt requested, to
35 the lessee's last-known address.

36 A copy of such notice, together with the return receipt
37 attached thereto, shall be filed with the clerk of the
38 county commission in which such lease is recorded, or
39 in which such oil and/or gas property is located in whole
40 or in part, and upon payment of a fee of fifty cents for
41 each such lease, said clerk shall permanently file such
42 notice alphabetically under the name of the first lessor
43 appearing in such lease and shall stamp or write upon the
44 margin of the record in his office of such lease hereafter
45 executed the words "canceled by notice"; and as to any
46 such lease executed before the enactment of this statute
47 said clerk shall file such notice as hereinbefore provided
48 and shall stamp or write upon the margin of the record of
49 such lease in his office the words "enforcement barred by
50 notice."

51 The word "lessor" shall include the original lessor, as
52 well as his or its successors in title to the oil and/or gas
53 involved. The word "lessee" shall include the original
54 lessee, his or its assignee properly of record at the time
55 such demand is made, and his or its successors, heirs or
56 personal representatives. No assignee of such lease whose
57 assignment is not recorded in the proper county shall be
58 heard in any court of this state to attack the validity or
59 sufficiency of the notice hereinbefore mentioned.

60 There shall be a rebuttable legal presumption that the
61 failure of a person, firm, corporation, partnership or
62 association to produce and sell or produce and use for its
63 own purpose for a period of greater than twenty-four
64 months, subsequent to the first day of July, one thousand
65 nine hundred seventy-nine, oil and/or gas produced from
66 such leased premises constitutes an intention to abandon
67 any oil and/or gas well and oil and/or gas well equipment
68 situate on said leased premises, including casing, rods,
69 tubing, pumps, motors, lines, tanks, separators, and any
70 other equipment used in the production of any oil and/or
71 gas from any well or wells on said leasehold estate.

72 This rebuttable presumption shall not be created in
73 instances (i) of leases for gas storage purposes, or (ii)
74 where any shut-in royalty, flat rate well rental, delay
75 rental, or other similar payment designed to keep an oil
76 or gas lease in effect or to extend its term has been paid
77 or tendered, or (iii) where the failure to produce and
78 sell is the direct result of the interference or action of
79 the owner of such oil and/or gas or his subsequent lessee
80 or assignee. Additionally, no such presumption shall be
81 created when a delay in excess of twenty-four months
82 occurs because of any inability to sell any oil and/or gas
83 produced or because of any inability to deliver or other-
84 wise tender such oil and/or gas produced to any person,
85 firm, corporation, partnership or association.

86 In all instances when the owner of such oil and/or gas
87 or his subsequent lessee or assignee desires to terminate
88 the right, interest, or title of any person, firm, corpora-
89 tion, partnership or association in such oil and/or gas by
90 utilization of the presumption created in this section,

91 this presumption may not be utilized except in an action
92 or proceeding by the owner of the oil and/or gas or his
93 lessee or assignee in an action brought in the circuit court
94 for the judicial district in which the oil and/or gas prop-
95 erty is partially or wholly located. A certified copy of
96 a final order of the circuit court shall be mailed by the
97 clerk of such court to the deputy director for oil and gas
98 of the department of mines as defined in section one,
99 article four, chapter twenty-two of this code.

100 The continuation in force of any such lease after de-
101 mand for and failure to pay such delay rental or failure
102 to produce and sell, or to produce and use oil and gas for
103 a period of twenty-four months as hereinbefore set forth
104 is deemed by the Legislature to be opposed to public
105 policy against the general welfare. If any part of this
106 section shall be declared unconstitutional such declaration
107 shall not affect any other part thereof.

CHAPTER 85

(H. B. 928—By Mr. Tompkins)

[Passed March 6, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enforcement by injunction; voidability of actions taken or decisions made in violation of article; making the enforcement by injunction applicable to the entire article; changing "decision" to "decisions"; and providing for circumstances under which bond issues may not be held void.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.**§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.**

1 The circuit court in the county where the public body
2 regularly meets or the judge thereof in vacation shall have
3 jurisdiction to enforce this article upon petition by any citizen
4 of this state who can show good faith and a valid reason for
5 making the application. No bond shall be required unless the
6 petition appears to be without merit or made with the sole
7 intent of harassing or delaying or avoiding return by the
8 governing body.

9 Any injunction granted pursuant to the provisions of this
10 section may order that actions taken or decisions made in
11 violation of this article may be enjoined or annulled if the peti-
12 tion therefor was filed within thirty days after the actions were
13 taken or decisions made and may also order that subsequent
14 actions be taken or decisions be made in conformity with the
15 provisions of this article: *Provided*, That no bond issue that
16 has been passed or approved by any governing body in this
17 state may be held void under this section if notice of the meet-
18 ing at which such bond issue was finally considered was given
19 at least ten days prior to such meeting by a Class I legal ad-
20 vertisement published in accordance with the provisions of
21 article three, chapter fifty-nine of this code in a qualified
22 newspaper having a general circulation in the geographic
23 area represented by that governing body.

CHAPTER 86

(S. B. 5—By Mr. Colombo)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new section, designated section four-a, relating to limiting to five years the time period for which the department of natural resources may contract with private concerns for operation of commissaries, restaurants, recreational facilities and similar establishments in the state parks and public recreation system; authorizing renewal of such contracts at the discretion of the director for periods not exceeding five years; and providing for termination of contracts by the director.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PARKS AND RECREATION.

§20-4-4a. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years' duration; renewal at option of director; termination of contract by the director.

1 When it is deemed necessary by the director to
2 enter into a contract with a person, firm or corporation
3 for the operation of a commissary, restaurant, recreational
4 facility or other such establishment within the state parks
5 and public recreation system, such contract shall be for
6 a duration not to exceed five years, but a contract so made
7 may provide for an option to renew at the director's
8 discretion for an additional term or terms not to exceed
9 five years at the time of renewal.

10 Any contract entered into by the director shall provide
11 an obligation upon the part of the operator that he
12 maintain a level of performance satisfactory to the direc-
13 tor, and shall further provide that any such contract may
14 be terminated by the director in the event he determines
15 that such performance is unsatisfactory and has given
16 the operator reasonable notice thereof.

CHAPTER 87

(Com. Sub. for H. B. 807—By Mrs. Neal and Mr. Brenda)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to probation and parole generally; eligibility for parole and probation; powers and duties of parole board; allegations to be contained in an information or indictment; ineligibility for probation for certain offenses involving firearms; ineligibility for parole prior to the service of certain minimum terms for certain offenses involving firearms; and the definition of the term "firearm."

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Probation; when eligible and ineligible therefor; definitions.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

§62-12-2. Probation; when eligible and ineligible therefor; definitions.

1 (a) All persons who have not been previously convicted of a
2 felony within five years from the date of the felony for which
3 they are charged, and who are found guilty of or plead guilty
4 to any felony, the maximum penalty for which is less than life
5 imprisonment, and all persons whether previously convicted or
6 not, who are found guilty of or plead guilty to any misde-
7 meanor, shall be eligible for probation, notwithstanding the
8 provisions of sections eighteen and nineteen, article eleven,
9 chapter sixty-one of this code.

10 (b) The provisions of subsection (a) of this section to the
11 contrary notwithstanding, any person who commits or attempts

12 to commit a felony with the use, presentment or brandishing of
13 a firearm shall be ineligible for probation. Nothing in this
14 section shall apply to an accessory before the fact or a
15 principal in the second degree who has been convicted as if
16 he were a principal in the first degree if, in the commission of
17 or in the attempted commission of the felony, only the principal
18 in the first degree used, presented or brandished a firearm.

19 (c) The existence of any fact which would make any per-
20 son ineligible for probation under subsection (b) of this section
21 because of the commission or attempted commission of a felony
22 with the use, presentment or brandishing of a firearm shall
23 not be applicable unless such fact is (i) found by the court
24 upon a plea of guilty or nolo contendere, or (ii) found by
25 the jury, if the matter be tried before a jury, or (iii) found
26 by the court, if the matter be tried by the court, without a
27 jury.

28 (d) For the purpose of this section, the term "firearm"
29 shall mean any instrument which will, or is designed to, or may
30 readily be converted to, expel a projectile by the action of an
31 explosive, gunpowder, compressed air or gas, or any other
32 similar means.

**§62-12-13. Powers and duties of board; eligibility for parole; pro-
cedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion
2 that the best interests of the state and of the prisoner will be
3 subserved thereby, and subject to the limitations hereinafter
4 provided, shall have the authority to release any such
5 prisoner on parole for such terms and upon such conditions
6 as are provided by this article. Any prisoner of a penitentiary
7 of this state, to be eligible for parole:

8 (1) Shall have served the minimum term of his indeter-
9 minate sentence, or shall have served one third of his definite
10 term sentence, as the case may be, except that in no case shall
11 any person who committed, or attempted to commit a felony
12 with the use, presentment or brandishing of a firearm, be eligi-
13 ble for parole prior to serving a minimum of three years of his
14 sentence or the maximum sentence imposed by the court,

15 whichever is less. Nothing in this section shall apply to an ac-
16 cessory before the fact or a principal in second degree who has
17 been convicted as if he were a principal in the first degree if, in
18 the commission of or in the attempted commission of the felony,
19 only the principal in the first degree used, presented or brand-
20 dished a firearm;

21 (2) Shall not be under punishment or in solitary confine-
22 ment for any infraction of prison rules;

23 (3) Shall have maintained a record of good conduct in
24 prison for a period of at least three months immediately pre-
25 ceding the date of his release on parole;

26 (4) Shall have satisfied the board that, if released on
27 parole, he will conduct himself in a lawful manner and that his
28 release is not incompatible with the best interests and welfare
29 of society generally.

30 Except in the case of one serving a life sentence, no person
31 who has been previously twice convicted of a felony may be re-
32 leased on parole until he has served the minimum term provided
33 by law for the crime for which he was convicted. No person
34 sentenced for life may be paroled until he has served ten years,
35 and no person sentenced for life who has been previously twice
36 convicted of a felony may be paroled until he has served fifteen
37 years. In the case of a person sentenced to any penal institution
38 of this state, it shall be the duty of the board, as soon as such
39 person becomes eligible, to consider the advisability of his or
40 her release on parole. If, upon such consideration, parole be
41 denied, the board shall at least once a year reconsider and re-
42 view the case of every prisoner so eligible, which reconsidera-
43 tion and review shall be by the entire board. If parole be
44 denied, the prisoner shall be promptly notified.

45 (b) In the case of any person sentenced to or confined under
46 sentence in any city or county jail in this state, the board shall
47 act only upon written application for parole. If such jail prison-
48 er is under sentence on a felony conviction, the provisions here-
49 of relating to penitentiary prisoners shall apply to and control
50 his release on parole. If such person is serving time on a mis-
51 demeanor conviction, he is eligible for parole consideration,

52 upon receipt of his written parole application and after time for
53 probation release by the sentencing court or judge has expired.

54 (c) The board shall, with the approval of the governor,
55 adopt rules and regulations governing the procedure in the
56 granting of parole. No provision of this article and none of the
57 rules and regulations adopted hereunder are intended or shall
58 be construed to contravene, limit or otherwise interfere with or
59 affect the authority of the governor to grant pardons and re-
60 prievs, commute sentences, remit fines or otherwise exercise
61 his constitutional powers of executive clemency.

62 The board shall be charged with the duty of supervising all
63 probationers and parolees whose supervision may have been
64 undertaken by this state by reason of any interstate compact
65 entered into pursuant to the uniform act for out-of-state
66 parolee supervision.

67 (d) When considering a penitentiary prisoner for release
68 on parole, the board of parole shall have before it an authentic
69 copy of or report on the prisoner's current criminal record as
70 provided through the department of public safety of West
71 Virginia, the United States department of justice or other
72 reliable criminal information sources and written reports of
73 the warden or superintendent of the penitentiary, as the case
74 may be, to which such prisoner is sentenced:

75 (1) On the prisoner's conduct record while in prison, in-
76 cluding a detailed statement showing any and all infractions
77 of prison rules by the prisoner and the nature and extent of
78 discipline and punishment administered therefor;

79 (2) On improvement or other changes noted in the prisoner's
80 mental and moral condition while in prison, including a state-
81 ment expressive of the prisoner's current attitude toward society
82 in general, toward the judge who sentenced him, toward the
83 prosecuting attorney who prosecuted him, toward the policeman
84 or other officer who arrested him and toward the crime for
85 which he is under sentence and his previous criminal record;

86 (3) On the prisoner's industrial record while in prison,
87 showing the nature of his prison work or occupation and the
88 average number of hours per day he has been employed in

89 prison industry and recommending the nature and kinds of
90 employment which he is best fitted to perform and in which
91 he is most likely to succeed when he leaves prison;

92 (4) On physical, mental and psychiatric examinations of
93 the prisoner conducted, insofar as practicable, within the two
94 months next preceding parole consideration by the board.

95 The board may waive the requirement of any such report
96 when not available or not applicable as to any prisoner con-
97 sidered for parole but, in every such case, shall enter in the
98 record thereof its reason for such waiver.

99 Before releasing any penitentiary prisoner on parole, the
100 board of parole shall arrange for him to appear in person be-
101 fore the board and the board may examine and interrogate him
102 on any matters pertaining to his parole, including reports before
103 the board made pursuant to the provisions hereof. The board
104 shall reach its own written conclusions as to the desirability of
105 releasing such prisoner on parole. The warden or superinten-
106 dent shall furnish all necessary assistance and cooperate to the
107 fullest extent with the board of parole. All information, records
108 and reports received by the board shall be kept on permanent
109 file.

110 The board and its designated agents shall at all times have
111 access to inmates imprisoned in any penal or correctional insti-
112 tutions of this state or in any city or county jail in this state, and
113 shall have power to obtain any information or aid necessary to
114 the performance of their duties from other departments and
115 agencies of the state or from any political subdivision thereof.

116 The board shall, if so requested by the governor, investigate
117 and consider all applications for pardon, reprieve or commu-
118 tation and shall make recommendation thereon to the governor.

119 Prior to making such recommendation and prior to releas-
120 ing any penitentiary person on parole the board shall notify
121 the sentencing judge and prosecuting attorney at least ten
122 days before such recommendation or parole.

CHAPTER 88

(Com. Sub. for H. B. 716—By Mr. Caudle)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to limiting liability of members of peer review committees and professional standards committees.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION RE-
FERRED TO IN CHAPTER.**

§30-1-16. Liability limitations of peer review committees and professional standards review committees.

1 No member of a peer review committee or a professional
2 standards review committee of a state or local professional
3 organization, including, but not limited to, committees estab-
4 lished to review the practices of doctors of chiropractic, doc-
5 tors of veterinary medicine, doctors of medicine, doctors of
6 dentistry, attorneys at law, real estate brokers, architects,
7 professional engineers, certified public accountants, public ac-
8 countants or registered nurses shall be deemed liable to any
9 person for any action taken or recommendation made within
10 the scope of the functions of the committee, if the committee
11 member acts without malice and in the reasonable belief that
12 such action or recommendation is warranted by the facts known
13 to him after reasonable effort to obtain the facts of the matter
14 as to which such action is taken or recommendation is made.

CHAPTER 89

(Com. Sub. for H. B. 1256—By Mr. Mathis)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to persons permitted to practice medicine and surgery in this state; licensing of practitioners from other states; temporary permits to practice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PHYSICIANS AND SURGEONS.

§30-3-4. Who permitted to practice medicine and surgery in this state; licensing of licensed practitioners from other states; permits to practice in prescribed areas.

1 The following persons and no others shall hereafter be
2 permitted to practice medicine and surgery in this state: (a)
3 All such persons as shall be legally entitled to practice
4 medicine and surgery in this state including those persons
5 holding temporary permits to practice in prescribed areas
6 as of the effective date of this section; (b) all such persons
7 as shall be graduates of medical schools, as approved by
8 the medical licensing board of West Virginia, and who provide
9 their original diplomas or evidence thereof for authentication
10 by the medical licensing board, and who shall pass an
11 examination before the medical licensing board and shall
12 receive a certificate therefrom as hereinafter provided:
13 *Provided*, That the said board, or a majority of them, may
14 accept in lieu of an examination of applicants, the certificate
15 of the national board of medical examiners issued within the
16 previous eight years, or diplomate certificate from an Ameri-
17 can specialty board: *Provided, however*, That any certificate
18 or license to practice which is granted by the board by virtue

19 of such diplomate certificate shall only be valid so long as the
20 holder thereof maintains such diplomate certificate in good
21 standing with the applicable American specialty board and no
22 longer and such certification shall be limited to that specific
23 specialty in the practice of medicine and surgery in this state,
24 or the certificate of license to practice medicine and surgery
25 legally granted by the state board of registration or examina-
26 tion or licensing board of another state or territory, whose
27 standard of qualification for the practice of medicine and sur-
28 gery is equivalent to that of this state, and grant to such ap-
29 plicant a certificate of license to practice medicine and surgery
30 in this state: *Provided, however,* That any physician who has
31 been certified by the educational council for foreign medical
32 graduates or who, as of the effective date of this section, holds
33 a temporary permit to practice in a prescribed area, shall not
34 when under the supervision of a licensed physician be in-
35 eligible for a temporary license permit to practice in any mental
36 health or state-owned facility and, in any hospital, clinic, phy-
37 sician's office and any other approved health care facility
38 until July one, one thousand nine hundred eighty-two, by virtue
39 of his failure to pass the medical examination prescribed by
40 the board, so long as such physician shall take said examina-
41 tion at least once each year: *Provided,* That any such physician
42 granted a temporary permit who fails to pass the medical
43 examination prescribed by the board before July one, one
44 thousand nine hundred eighty-two, shall be thereafter dis-
45 qualified from obtaining any further temporary permits in
46 this state: *Provided, however,* That after July one, one thou-
47 sand nine hundred eighty, no physician may be awarded a
48 temporary permit unless such physician was a bona fide
49 resident of this state for the six-month period preceding the
50 filing of his application for such temporary permit: *Provided*
51 *further,* That no one who does not hold a temporary permit
52 on or before the effective date of this section shall be eligible
53 for a temporary permit who has failed to pass the medical
54 examination or an examination equivalent to that given by the
55 medical licensing board on two or more occasions: *Provided*
56 *further,* That nothing herein shall prohibit any former tem-
57 porary permit holder from being certified as a physician as-
58 sistant pursuant to article three-a of chapter thirty: *And pro-*
59 *vided further,* That the board shall not limit the number of

60 times a physician may take the medical examination, and that
61 the said board is required to establish a program that will assist
62 all temporary license holders in preparing for and passing
63 the medical examination prescribed by it. Whenever in the
64 judgment of the medical licensing board a condition exists
65 in which medical service may be required, the said board is
66 authorized to grant permits for the practice of medicine to
67 qualified physicians in prescribed areas, and such permits
68 shall be subject to revocation when the agreement, under
69 which they were issued, has been violated.

70 A fee of one hundred fifty dollars shall accompany each
71 application for licensure by examination, reexamination or
72 reciprocity, twenty-five dollars of which shall be retained by the
73 board in the event an application is withdrawn or rejected.
74 A fee of twenty-five dollars shall accompany each application
75 for temporary permits and a fee of ten dollars shall accom-
76 pany each application for an extension thereof.

CHAPTER 90

(Com. Sub. for H. B. 1386—By Mr. Wooton)

[Passed March 7, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, providing for the organization of accounting corporations for the practice of public accounting, maintaining the accountant-client relationship and any liability arising therefrom; specifying that the creation of an accounting corporation shall not affect ethical standards of conduct; specifying that an accounting corporation may issue its capital stock only to duly licensed public accountants or certified public accountants; relating to authorization for accounting corporations by the West Virginia board of accountancy; relating to fees; authorizing the West Virginia board of accountancy to adopt rules and regulations in connection with accounting corporations; relating to issuance of certif-

icate of incorporation for an accounting corporation; establishing restrictions upon the transfer of shares of stock in an accounting corporation; and relating to corporate names of accounting corporations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. ACCOUNTANTS.

§30-9-4a. Accounting corporations.

1 One or more individuals, each of whom is licensed to
2 practice public accountancy within this state, may orga-
3 nize and become a shareholder or shareholders of an ac-
4 counting corporation. Individuals who may be practicing
5 public accounting as an organization created otherwise than
6 pursuant to the provisions of this section may incorpor-
7 ate under and pursuant to this section. This section is not
8 intended to amend the statutory or common law as it re-
9 lates to associations or partnerships, except to allow part-
10 nerships of licensed public accountants or certified pub-
11 lic accountants to organize as an accounting corpora-
12 tion.

13 An accounting corporation may render professional service
14 only through officers, employees and agents who are themselves
15 duly licensed to practice public accounting within this state.
16 The term "employee" or "agent" as used in this section, does
17 not include secretaries, clerks, typists or other individuals who
18 are not usually and ordinarily considered by custom and
19 practice to be rendering accounting services for which a license
20 is required.

21 This section does not modify the law as it relates to the
22 relationship between a person furnishing accounting services
23 and his client, nor does it modify the law as it relates to
24 liability arising out of such a professional service relationship.
25 Except for permitting an accounting corporation, this section
26 is not intended to modify any legal requirement or court rule

27 relating to ethical standards of conduct required of persons
28 providing public accounting services.

29 An accounting corporation may issue its capital stock only
30 to persons who are duly licensed public accountants or certi-
31 fied public accountants.

32 When not inconsistent with this section, the organization
33 and procedures of accounting corporations shall conform to the
34 requirements of article one, chapter thirty-one of this code.

35 The West Virginia board of accountancy may require that
36 public accountants and certified public accountants under its
37 licensing authority must obtain its prior authorization before
38 beginning to act as an accounting corporation and may require
39 a fee of not more than twenty-five dollars for each application
40 for authorization to form an accounting corporation. The West
41 Virginia board of accountancy may adopt rules and regulations:
42 (1) To set reasonable standards for granting or refusing prior
43 approval, (2) to require appropriate information therefor from
44 an accounting corporation applicant, and (3) to notify the sec-
45 retary of state that certain persons have been given authoriza-
46 tion by the West Virginia board of accountancy to form an
47 accounting corporation.

48 Upon notification by the West Virginia board of accountancy
49 of its approval the secretary of state, upon compliance by the
50 incorporators with this section and the applicable provisions of
51 chapter thirty-one of this code, may issue to the incorporators
52 a certificate of incorporation for the accounting corporation
53 which then may engage in practice through duly licensed or
54 otherwise legally authorized stockholders, employees and
55 agents.

56 A shareholder of an accounting corporation may sell or
57 transfer his shares of stock in such corporation only to another
58 individual who is duly licensed to practice public accountancy
59 in this state or back to the corporation.

60 The corporate name of an accounting corporation shall
61 contain the last name or names of one or more of its share-
62 holders: *Provided*, That if the rules or regulations of the West
63 Virginia board of accountancy so permit the corporate name

64 may contain or include the name or names of former share-
65 holders or of persons who were associated with a predecessor
66 partnership or other organization. The corporate name shall
67 also contain the words "accounting corporation" or the abbrevi-
68 ation "A.C." The use of the word "company," "corporation,"
69 or "incorporated," or any other words or abbreviations in the
70 name of a corporation organized under this article which indi-
71 cates that such corporation is a corporation, other than the
72 words "accounting corporation" or the abbreviation "A.C." is
73 specifically prohibited.

CHAPTER 91

(Com. Sub. for S. B. 488—By Mr. Brotherton, Mr. President)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight-a, relating to the registration of architects; clarifying that partnerships, corporations and other business entities may engage in the practice of architecture under certain conditions; and providing that the professional relationship between architects and their clients remains unchanged.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.

§30-12-8a. Application of article to partnerships, corporations and other business entities; relationship of architects to clients.

1 Nothing contained in this article may be construed to
2 preclude any partnership, corporation or other business

3 entity, whether heretofore or hereafter created, from en-
4 gaging in the practice of professional architecture in this
5 state so long as such practice is actually carried on by
6 architects registered in accordance with this article.

7 This section does not modify the law as it relates to the
8 relationship between an architect and his client, nor does
9 it modify the law as it relates to liability arising out of
10 such professional service relationship, and the person or
11 persons performing such architectural services shall re-
12 main personally liable for the architectural services they
13 perform for such corporation. This section is not intended
14 to modify any requirement, legal or otherwise, relating to
15 ethical standards of conduct required of persons providing
16 professional architectural services.

CHAPTER 92

(H. B. 1420—By Mr. Reed, 10th District, and Mr. Holt)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirements for applicants for a license to practice chiropractic; accreditation of schools and colleges.

Be it enacted by the Legislature of West Virginia:

That section four, article sixteen, 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 16. CHIROPRACTORS.

§30-16-4. Application for license; qualifications of applicant.

1 Any person wishing to practice chiropractic in this state
2 shall apply to the secretary of the board for a license so to
3 practice. Each applicant shall establish the fact to the board
4 that he has satisfied the following requirements: (a) That he

5 is eighteen years of age or over; (b) that he is of good moral
6 character; (c) that he is a graduate of an accredited high
7 school giving a four-year course or has an education equivalent
8 to the same; (d) that he has attended for at least two academic
9 years consisting of no less than sixty semester hours, an
10 academic college equal in standing to the West Virginia
11 University; (e) that he is a graduate of a chiropractic school
12 or college approved by the West Virginia board of chiroprac-
13 tic examiners and having status with an accrediting agency
14 recognized by the United States department of health, educa-
15 tion and welfare as an acceptable accrediting agency for
16 granting accreditation in chiropractic education in a resident
17 course of not less than four academic years of nine months
18 each, and active attendance at the same for a minimum of
19 four thousand hours of fifty minutes each of classroom and
20 laboratory instruction: *Provided*, That this requirement shall
21 not be construed to disqualify applicants that graduated from
22 chiropractic schools or colleges before the passage of this
23 article which taught a resident course of at least three aca-
24 demic years of eight months each or a minimum of two
25 thousand hours of fifty minutes each and required active
26 attendance upon the same, nor shall the requirement that a
27 chiropractic school or college have status with an acceptable
28 accrediting agency recognized by the United States department
29 of health, education and welfare as an acceptable accrediting
30 agency, be construed to disqualify any applicant, who, on
31 April ninth, one thousand nine hundred seventy-seven, was
32 enrolled in a chiropractic school or college then accredited
33 by the American chiropractic association or the international
34 chiropractic association: *Provided*, That such applicant at
35 the time of his enrollment in such school maintained bona
36 fide residence in the state. Attendance at the academic
37 college as set forth in requirement (d) shall be prior to
38 entrance into the chiropractic training as set forth in re-
39 quirement (e): *Provided, however*, That this requirement
40 of sequence of attendance at an academic college then chiro-
41 practic school or college shall not apply to those appli-
42 cants who at the time of passage of this article have com-
43 pleted or are in the process of fulfilling the requirements
44 set forth in (e) above; nor shall such requirement of se-
45 quence of attendance at an academic college then chiropractic

46 school or college apply to such applicants who have, sub-
47 sequent to the passage of this article, commenced the ful-
48 fillment of requirement (c) under the educational provi-
49 sions of the federal servicemen's readjustment act now in
50 force or as may hereafter be amended, or such federal act
51 of similar effect, benefit or purpose as may hereafter be
52 enacted by the Congress.

CHAPTER 93

(H. B. 1103—By Mr. Speaker, Mr. See)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact article seventeen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a board of registration for sanitarians and prescribing its functions, qualifications, appointment, compensation and expenses of members; registration of sanitarians and sanitarians-in-training; certificates of registration; fees; revocation; expenditures of funds; and penalty.

Be it enacted by the Legislature of West Virginia:

That article seventeen, 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 17. SANITARIANS.

- §30-17-1. State board of registration.
- §30-17-2. Definitions.
- §30-17-3. Registration of sanitarians required.
- §30-17-4. Qualifications for registration.
- §30-17-5. Qualifications for registration as a sanitarian-in-training.
- §30-17-6. Examination for registration as a sanitarian.
- §30-17-7. Board of registration for sanitarians.
- §30-17-8. Terms of office.
- §30-17-9. Board organization; duties of the board, officers, compensation, seal and meetings.
- §30-17-10. Record of proceedings; register of applications; register of registered sanitarians and sanitarians-in-training.

- §30-17-11. Application; fees; renewals, etc.
§30-17-12. Suspension or revocation of registration.
§30-17-13. Reciprocity.
§30-17-14. Use of title.
§30-17-15. Violation; penalty.

§30-17-1. State board of registration.

1 There is hereby created a board of registration to register
2 qualified sanitarians whose duties in public health and enviro-
3 nmental sanitation require a knowledge of physical, biologi-
4 cal, and sanitary sciences or environmental health, and com-
5 munity hygiene and whose professional pursuits and duties are
6 necessary to the promotion of life, health, and well-being of
7 the community.

§30-17-2. Definitions.

1 The words and phrases defined below shall when used in this
2 article, have the following meaning unless the context clearly
3 indicates otherwise:

4 (a) "Board" means the board of registration for sanitarians
5 hereby created.

6 (b) "Sanitarian" means a public health professional unique-
7 ly qualified by education in the arts and sciences, specialized
8 training, and credible field experience to assist in the enforce-
9 ment of public health laws and environmental sanitation regu-
10 lations, and to effectively plan, organize, manage, evaluate and
11 execute one or more of the many diverse disciplines com-
12 prising the field of public health and environmental sanitation.

13 (c) "Registered sanitarian" means a sanitarian registered in
14 accordance with the provisions of this article.

15 (d) "Sanitarian-in-training" means a person who possesses
16 the necessary educational qualifications as prescribed in this
17 article for registration as a professional sanitarian, but who has
18 not completed the experience requirements in the fields of
19 environmental sanitation as required for registration.

20 (e) "Certificates of registration" means a document issued as
21 evidence of registration and qualification to practice as a sani-
22 tarian or a sanitarian-in-training under this article, and bearing

23 the designation "registered sanitarian" or "sanitarian-in-
24 training" and showing the name of the person, date of issue,
25 serial number, seal and signatures of the members of the board
26 hereby authorized to grant such certificates.

§30-17-3. Registration of sanitarians required.

1 On and after the first day of July, one thousand nine hun-
2 dred seventy-seven, no person shall perform or offer to per-
3 form the duties of a sanitarian in this state without first ap-
4 plying for and obtaining from the state board of registration
5 for sanitarians a certificate of registration as a sanitarian or a
6 sanitarian-in-training.

§30-17-4. Qualifications for registration.

1 Any person desiring to be registered as a sanitarian may
2 make application to the board on a form prescribed by the
3 board. The board shall accept such application when sub-
4 mitted if accompanied by the required fees. Persons meeting
5 the following qualifications shall be eligible for registration
6 under this article:

7 (a) Graduate with a baccalaureate or higher degree from
8 an accredited college or university, successfully completed
9 a sanitarians' training course of two hundred fifty to three
10 hundred hours approved by the board of registration,
11 employed full time as a sanitarian in an official health de-
12 partment for a period of not less than four years, and has
13 passed an examination given and conducted by the board under
14 the provisions of this article.

15 (b) A baccalaureate degree in chemistry, biology, physical
16 science or agriculture may be substituted for one year of the
17 required experience.

18 (c) A baccalaureate degree in environmental health, sani-
19 tary science or community hygiene may be substituted for
20 two years of the required experience.

21 (d) A master's degree in public health, environmental
22 science, sanitary science or community hygiene may be sub-
23 stituted for three of the required years of experience.

24 (e) Any person who on or before the first day of July, one

25 thousand nine hundred seventy-nine, has been registered as
26 a sanitarian in the state of West Virginia.

§30-17-5. Qualifications for registration as a sanitarian-in-training.

1 Any person meeting the educational qualifications of sec-
2 tion four, subdivisions (a), (b), (c), (d) of this article, but who
3 does not meet the experience requirements of said section may
4 make application to the board on a form prescribed by the
5 board for registration as a sanitarian-in-training. The board
6 shall accept such application when submitted, if accompanied
7 by the required fees.

§30-17-6. Examination for registration as a sanitarian.

1 (a) On and after the first day of July, one thousand nine
2 hundred seventy-nine, only persons who meet the education
3 and experience requirements in section four, subdivisions (a),
4 (b), (c), (d) of this article, shall be eligible for admission to
5 examination for registration as a sanitarian.

6 (b) Examination for the registration of sanitarians-in-train-
7 ing may be required by the discretion of the board.

8 (c) Examination for registration of sanitarians under this
9 article, shall be administered not less than once each calendar
10 year, in the state at such times and places as may be specified
11 from time to time by the board. Such examination may be
12 written, oral, or both, and shall include applicable subjects in
13 the field of environmental sanitation as it relates to public
14 health and such other subjects pertinent to the qualifications
15 of sanitarians such as, the board may prescribe, physical,
16 biological and sanitary sciences or environmental health and
17 community hygiene. The examination shall be objective and
18 of practical character. The examination papers shall not dis-
19 close the name of any applicant, but shall be identified by a
20 number assigned by the secretary of the board.

21 (d) A person shall not be registered if he fails to meet the
22 minimum grade requirements for examination specified by
23 the board. If an applicant fails to meet such minimum grade
24 requirements in his first examination, he may be reexamined
25 at any time and place specified by the board for the adminis-

26 tration of such examination and upon resubmitting his appli-
27 cation accompanied by the prescribed fees.

28 (c) The board shall hold at least one meeting each year
29 to review and evaluate applications for registration as sanitari-
30 ans and sanitarians-in-training, conduct examinations, review
31 and approve all bills, prepare and approve reports, and trans-
32 act all other business as may be necessary to carry out the
33 provisions of this article.

34 (f) The board shall issue certificates of registration to which
35 the official seal of the board has been affixed, and shall an-
36 nually issue numbered identification cards to applicants who
37 have been found qualified as sanitarians and sanitarians-in-
38 training.

39 (g) The board may hold hearings for the purpose of admin-
40 istrative adjudication of such matters as may properly come
41 before it, make the necessary determinations in conjunction
42 therewith and issue such orders as may be consistent with the
43 findings. The board may designate one or more of its members
44 as a hearing agent. Such agent or representative shall conduct
45 such hearings in the manner provided by law.

46 (h) Three members of the board shall constitute a quorum
47 and special meetings of the board shall be called by the sec-
48 retary upon written request of any two members of the board,
49 or upon a written request signed by ten registered sanitarians.

50 (i) All board meetings shall be open to any registered
51 sanitarian with the exception of the executive board sessions.

52 (j) The secretary of the board shall receive and account
53 for all money received from the operation of this article.

54 (k) The examination papers and records pertaining thereto
55 shall be filed with the board and retained for at least one year.

§30-17-7. Board of registration for sanitarians.

1 A board for the registration and examination of sanitarians
2 and sanitarians-in-training is hereby established to be known
3 as the board of registration for sanitarians. The board shall
4 consist of the state director of health, who shall be a member
5 ex officio and secretary of the board, and four registered sani-

6 tarians to be appointed by the governor, by and with the
7 advice and consent of the Senate. Each member appointed by
8 the governor shall have been engaged in active practice as a
9 registered sanitarian in this state for at least five years prior
10 to his appointment, and except in the case of the original mem-
11 bers of the board, shall have been registered in this state as a
12 registered sanitarian.

§30-17-8. Terms of office.

1 On or before the first day of July, one thousand nine
2 hundred seventy-nine, the governor shall name the four original
3 appointive board members for terms of one, two, three and four
4 years respectively, beginning on that date. Thereafter each
5 appointment shall be for a term of four years, except that an
6 appointment to fill a vacancy shall be for the unexpired
7 term. The governor, with the concurrence of the board, may
8 remove an appointive board member for misconduct in office,
9 incompetency, conflict of interest, neglect of duty or other
10 sufficient cause after due notice and hearing, if requested.

§30-17-9. Board organization; duties of the board, officers, compensation, seal and meetings.

1 (a) The members of the board shall, as soon as appointed,
2 organize and annually thereafter in the month of July, elect
3 from their number a chairman and vice chairman.

4 (b) The board shall make such rules and regulations as
5 are necessary to carry out the provisions of this article.

6 (c) Funds collected under the provisions of this article
7 shall be used exclusively to pay compensation and expenses
8 of the board and to administer the provisions of this article.

9 (d) The board may at such times as it deems necessary
10 employ such administrative employees or other persons as may
11 be necessary to carry out the provisions of this article.

§30-17-10. Record of proceedings; register of applications; register of registered sanitarians and sanitarians-in-training.

1 (a) The board shall keep a record of its proceedings.

2 (b) The board shall maintain a register of all applications
3 for registration, which shall show:

4 (1) The place of residence, name and age of each applicant;

5 (2) The date of application;

6 (3) Complete information of education and experience
7 qualifications;

8 (4) The action taken by the board;

9 (5) The serial number of the certificate of registration and
10 identification card issued to the applicant;

11 (6) The date on which the board reviewed and acted upon
12 the application; and

13 (7) Such other pertinent information as may be deemed
14 necessary by the board.

15 (c) The board shall maintain a current registry of all
16 sanitarians and sanitarians-in-training in the state of West
17 Virginia that have been registered in accordance with the
18 provisions of this article.

§30-17-11. Application; fees; renewals, etc.

1 The board shall prescribe and provide an application
2 form for use of all applicants. Applicants for registration
3 as sanitarians shall deposit a fee of twenty dollars, and appli-
4 cants for registration as sanitarians-in-training shall deposit
5 a fee of ten dollars, at the time of making application for
6 registration. The board may also assess an additional fee for
7 the cost of the examination when deemed necessary. Should the
8 board deny the issuance of a certificate to any applicant, the
9 initial fee deposited shall be retained as a fee for processing and
10 evaluating the application.

11 A sanitarian registered under the provisions of this article
12 may renew his certificate by paying the board an annual re-
13 newal fee of ten dollars. Said fee shall be due and payable
14 on or before the first day of July for which a renewal certifi-
15 cate for the current year shall be issued. All certificates shall
16 expire on the renewal date unless renewed prior to such date.
17 Registrations expired for failure to pay renewal fees may be

18 reinstated only upon the payment of all lapsed renewal fees:
19 *Provided*, That the payment of such lapsed renewal fees
20 shall not apply to any sanitarian who has not been a prac-
21 ticing sanitarian in this state for five or more years.

§30-17-12. Suspension or revocation of registration.

1 The board shall have the power to suspend or revoke, after
2 due notice and proper hearing, a certificate of registration
3 when the holder is found guilty of unprofessional conduct, the
4 practice of fraud or deceit in obtaining a certificate of regis-
5 tration, dereliction of duty, conflict of interest, incompetence
6 in the practice of environmental sanitation, malfeasance or
7 misfeasance in office, any criminal, infamous, dishonest, im-
8 moral or notoriously disgraceful conduct, drug addiction or
9 habitual use of intoxicants to excess, any acts which furnish
10 reasonable grounds for belief by the board that the certificate
11 holder may be subject to coercion, influence or pressure which
12 may cause him to act contrary to the best interest of the pro-
13 fession, or for other good and sufficient cause. Notice of
14 hearing in writing shall be given not less than thirty days prior
15 to the date of the hearing, designating the time and place of
16 hearing and providing the certificate holder with a copy of the
17 charges against him. The person charged shall be entitled to be
18 represented at the hearing and present evidence in his defense.
19 Every order of the board causing the suspension or revoca-
20 tion of a certificate of registration shall be predicated on
21 findings based upon the record of hearing; the determination
22 of the board may be reviewed by a court only to determine
23 whether the board abused its discretion or exceeded its jur-
24 isdiction.

§30-17-13. Reciprocity.

1 The board shall, upon application therefor, and upon pay-
2 ment of a fee of twenty dollars, issue a certificate of registra-
3 tion as a sanitarian to any person who holds a certificate of
4 registration issued to him by the proper authority of any state,
5 or territory, or possession of the United States, or any country:
6 *Provided*, That the requirements for the registration of sani-
7 tarians under which the certificate was issued do not conflict
8 with the provisions of this article and at the time said
9 certificate was granted were of a standard not lower than those

10 specified in section four, subdivisions (a), (b), (c), (d) of this
11 article.

§30-17-14. Use of title.

1 Only a person who has qualified as a registered sanitarian
2 and who holds a valid current registration certificate for use
3 in this state shall have the right and privilege of using the
4 title, "registered sanitarian" and to use the abbreviation, "r.s."
5 after his name.

§30-17-15. Violation; penalty.

1 It shall be unlawful for any person to represent himself
2 as, or perform duties of a registered sanitarian without being
3 duly registered and the holder of a currently valid certificate
4 of registration issued by the board.

5 On and after the first day of July, one thousand nine hun-
6 dred seventy-nine, each person practicing as a sanitarian shall
7 hold a valid certificate as a registered sanitarian or sanitarian-
8 in-training.

9 A person who violates the provisions of this article is,
10 upon conviction thereof, guilty of a misdemeanor, and shall
11 be punished by a fine not to exceed two hundred dollars, or
12 imprisoned for not more than thirty days, or both. Magis-
13 trates shall have concurrent jurisdiction with circuit courts
14 to enforce the provisions of this article. In addition, the board
15 is authorized and empowered to apply to any court having
16 equity powers, or to the judge thereof in vacation, for an in-
17 junction to restrain any violation of the provisions of this article.

CHAPTER 94

(H. B. 1428—By Mr. Speaker, Mr. See, and Mr. Bryan)

[Passed March 10, 1979: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chap-
ter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to increasing the

amount of temporary reemployment compensation that a retirant may receive, and continue to receive his annuity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement.

1 In the event a retirant becomes employed by a participating
2 public employer, payment of his annuity shall be suspended
3 during the period of his reemployment and he shall become a
4 contributing member to the retirement system. If his reem-
5 ployment is for a period of one year or longer, his annuity
6 shall be recalculated and he shall be granted an increased
7 annuity due to such additional employment, said annuity to
8 be computed according to section twenty-two of this article.
9 A retirant may accept temporary employment from a partici-
10 pating employer so long as he shall not receive compensation
11 in excess of forty-two hundred dollars per year and continue
12 to draw his annuity.

CHAPTER 95

(Com. Sub. for S. B. 260—By Mr. Hamilton and Mr. Williams)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article thirteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article four, chapter twenty of said code by adding thereto a new section, designated section thirteen; and to amend article one, chapter twenty-nine of said code by adding thereto a new section, designated section thirteen, all relating to transferring title in a portion of the Washington-Carver Camp from the board of regents to the department

of culture and history; directing that certain development thereof be made; directing that the department make the camp available to other governmental agencies in certain instances; transferring title to the remaining portion of the camp to the department of natural resources; directing that the board of regents act promptly; reserving to the board of regents certain interests in deeds; and prohibiting disposition or removal of minerals without authorization by the Legislature.

Be it enacted by the Legislature of West Virginia:

That section one, article thirteen, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article four, chapter twenty of said code be amended by adding thereto a new section, designated section thirteen; and that article one, chapter twenty-nine of said code be amended by adding thereto a new section, designated section thirteen, all to read as follows:

Chapter

- 18. Education.
- 20. Natural Resources.
- 29. Miscellaneous Boards and Officers.

CHAPTER 18. EDUCATION.

ARTICLE 13. WEST VIRGINIA STATE COLLEGE.

§18-13-1. Continuation and management; courses and degrees; rules and regulations.

1 The institution for the instruction of students hereto-
2 fore established and located at Institute, in Kanawha
3 County, shall be continued and shall be known as the
4 "West Virginia State College." The business and educa-
5 tional affairs of said college shall be under the control,
6 supervision and management of the state board of edu-
7 cation, as provided in section thirteen, article two of this
8 chapter.

9 The state board of education shall establish and main-
10 tain in the West Virginia State College, in addition to
11 the courses of study leading to a bachelor of science or

12 bachelor of arts degree, such professional and profes-
13 sional courses of study as may be expedient and prac-
14 ticable, and shall prescribe the conditions for graduation
15 therefrom and make rules for the conferring of degrees
16 and for issuing the proper diplomas to those who success-
17 fully complete such courses.

18 The rules and regulations made by the president and
19 faculty of said college for its general government, for the
20 admission of students thereto, the standards of scholar-
21 ship to be maintained therein and the graduation of
22 students therefrom, shall be submitted to the state board
23 of education for its approval.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 4. PARKS AND RECREATION.

§20-4-13. Transfer of portions of Washington-Carver Camp to department of natural resources; board of regents to act promptly; reservation of interests by the board of regents; prohibition of disposition or removal of minerals without authorization by the Legislature.

1 The board of regents shall transfer to the department of
2 natural resources the title and all interests, not herein
3 excepted, to that portion of the Washington-Carver Camp
4 in Fayette County which is not transferred to the public
5 land corporation of West Virginia under section thirteen,
6 article one, chapter twenty-nine of this code. Such prop-
7 erty transferred to the department of natural resources
8 shall be used to expand recreational activities at Babcock
9 State Park. The board of regents shall have the necessary
10 documents prepared and executed promptly and shall
11 cooperate fully to expedite the transfer and the improve-
12 ment of the property. The deed shall contain a provision
13 to reserve unto the board of regents all rights and in-
14 terests in the timber, and all minerals together with the
15 right of ingress and egress to mine, remove and take
16 away the timber and minerals from the property. The
17 board of regents shall not assign, lease, or otherwise
18 encumber, sell, mine, remove, or permit removal of, any

19 mineral or minerals from the property without specific
20 authorization by the Legislature.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-13. **Transfer of portions of Washington-Carver Camp to public land corporation for department; development; board of regents to act promptly; reservation of interests by the board of regents; prohibition of disposition or removal of minerals without authorization by the Legislature.**

1 The board of regents shall transfer to the public land
2 corporation of West Virginia for control, administration
3 and supervision by the department the title and all in-
4 terests, not herein excepted, to the Washington-Carver
5 Camp in Fayette County: *Provided*, That such transfer
6 shall be at least thirty acres and such additional acreage,
7 subject to the approval of the governor, that the commis-
8 sioner of the department of culture and history may
9 determine necessary to adequately operate and maintain
10 such a camp and facilities related thereto and shall also
11 include that portion of the camp upon which capital im-
12 provements, including roads, have been made. All re-
13 maining property shall be transferred to the department
14 of natural resources as provided in section thirteen, article
15 four, chapter twenty of this code. The department shall
16 undertake to develop such cultural and multicultural,
17 artistic, humanistic and educational programs at the camp
18 as will serve and benefit the citizens of the state and the
19 many cultures represented therein. In order to ensure
20 the maximum reasonable utilization of that portion of
21 the camp under its jurisdiction, the department, during
22 times it is not being used for its purposes, make it avail-
23 able, under such terms as it deems proper, to any other
24 agency of government or nonprofit group desiring to use
25 it. The camp shall retain the name "Washington-Carver
26 Camp" as indicative of its heritage of serving the black
27 citizens of the state. The department is authorized to
28 provide necessary and suitable equipment and other re-
29 sources for implementing the provisions of this section.
30 The board of regents shall have the necessary documents

31 prepared and executed promptly and shall cooperate fully
32 to expedite the transfer and the development of the
33 property. The deed shall contain a provision to reserve
34 unto the board of regents all rights and interests in the
35 timber, and all minerals together with the right of ingress
36 and egress to mine, remove and take away the timber and
37 minerals from the property. The board of regents shall
38 not assign, lease, or otherwise encumber, sell, mine, re-
39 move, or permit removal of, any mineral or minerals
40 from the property without specific authorization by the
41 Legislature.

CHAPTER 96

(Com. Sub. for H. B. 1381—By Mr. Speaker, Mr. See)

[Passed March 6, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing salaries of members of the department of public safety; and providing for clarification of the limits of leave time to be granted to members for duty training in the national guard or the reserve components of the armed forces of the United States.

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 of public safety shall receive
- 2 annual salaries pursuant to appropriation by the Legislature,
- 3 payable at least monthly as follows:
- 4 Any lieutenant colonel shall receive an annual salary of

5 twenty-two thousand twenty dollars; any major shall receive an
6 annual salary of nineteen thousand nine hundred thirty-two
7 dollars; any captain shall receive an annual salary of eighteen
8 thousand three hundred twenty-four dollars; any lieutenant
9 shall receive an annual salary of seventeen thousand two
10 hundred eight dollars; any master sergeant or first sergeant
11 shall receive an annual salary of sixteen thousand one hundred
12 forty dollars; any sergeant shall receive an annual salary
13 of fifteen thousand three hundred sixty dollars; any corporal
14 shall receive an annual salary of fourteen thousand five hundred
15 thirty-two dollars; any trooper first class shall receive an
16 annual salary of thirteen thousand six hundred fifty-six dollars;
17 and any newly enlisted trooper shall receive a salary of nine
18 hundred eighty-eight dollars monthly during the period of
19 his basic training, and upon the satisfactory completion of
20 such training and assignment to active duty each such trooper
21 shall receive, during the remainder of his first year's service,
22 a salary of one thousand sixty-eight dollars monthly. During
23 the second year of his service in the department each such
24 trooper shall receive an annual salary of thirteen thousand
25 one hundred four dollars; during the third year of his service
26 each such trooper shall receive an annual salary of thirteen
27 thousand three hundred eight dollars; and during the fourth
28 year and fifth year of such trooper's service and for each
29 year thereafter he shall receive an annual salary of thirteen
30 thousand four hundred eighty-eight dollars. Each member
31 of the department whose salary is specified herein shall receive
32 and be entitled to an increase in salary over that hereinbefore
33 set forth, for grade in rank, based on length of service, in-
34 cluding that heretofore and hereafter served with the depart-
35 ment, as follows: At the end of five years of service with the
36 department, such member shall receive a salary increase of
37 three hundred dollars to be effective during his next three
38 years of service and a like increase at three-year intervals
39 thereafter, with such increases to be cumulative.

40 In applying the foregoing salary schedule where salary
41 increases are provided for length of service, members of the
42 department in service at the time this article becomes effective
43 shall be given credit for prior service and shall be paid such

44 salaries as the same length of service will entitle them to
45 receive under the provisions hereof.

46 The Legislature finds and declares that there is litigation
47 pending in the circuit court of Kanawha County on the question
48 whether members of the department of public safety are
49 covered by the provisions of the state wage and hour law,
50 article five-c, chapter twenty-one of this code. The Legislature
51 further finds and declares that because of the unique duties
52 of members of the department, it is not appropriate to apply
53 said wage and hour provisions to them. Accordingly, mem-
54 bers of the department of public safety are hereby excluded
55 from the provisions of said wage and hour law. The express
56 exclusion hereby enacted shall not be construed as any indica-
57 tion that such members were or were not heretofore covered
58 by said wage and hour law.

59 In lieu of any overtime pay they might otherwise have
60 received under the wage and hour law, and in addition to
61 their salaries and increases for length of service, members who
62 have completed basic training may receive supplemental pay
63 as hereinafter provided.

64 The superintendent shall, within thirty days after the ef-
65 fective date hereof, promulgate a rule or regulation to estab-
66 lish the number of hours per month which shall constitute the
67 standard work month for members of the department. Such
68 rule or regulation shall further establish, on a graduated hourly
69 basis, the criteria for receipt of a portion or all of such sup-
70 plemental payment when hours are worked in excess of such
71 standard work month. Such rule or regulation shall be
72 promulgated pursuant to the provisions of chapter twenty-nine-
73 a of the code. The superintendent shall certify monthly to the
74 department's payroll officer the names of those members who
75 have worked in excess of the standard work month and the
76 amount of their entitlement to supplemental payment.

77 The supplemental payment shall be in an amount equal to
78 one and one-half percent of the annual salary of a trooper
79 during his second year of service, not to exceed one hundred
80 seventy-five dollars monthly. The superintendent and civilian
81 employees of the department shall not be eligible for any
82 such supplemental payments.

83 Each member of the department, except the superintendent
84 and civilian employees, shall execute, before entering upon the
85 discharge of his duties, a bond with security in the sum of
86 five thousand dollars payable to the state of West Virginia, con-
87 ditioned upon the faithful performance of his duties and such
88 bond shall be approved as to form by the attorney general
89 and to sufficiency by the governor.

90 Any member of the department who is called to perform
91 active duty for training or inactive duty training in the national
92 guard or any reserve component of the armed forces of the
93 United States annually shall be granted upon request leave
94 time not to exceed thirty calendar days for the purpose of
95 performing such active duty for training or inactive duty
96 training, and the time so granted shall not be deducted from any
97 leave accumulated as a member of the department.

CHAPTER 97

(Com. Sub. for S. B. 473—By Mr. Brotherton, Mr. President)

[Passed March 8, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety generally; creating procedures for appeals; convening appeals boards and selection of board members by lot; authorizing members of the appeals boards to administer oaths; subpoena witness and require the production of books and records; no liability for testimony; and providing for contempt proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-6. Departmental appeals boards; appeal procedures.

1 Appeals of transfers, suspensions, demotions in rank and

2 discharges shall be heard by boards of appeals convened
3 pursuant to the provisions of this section. The boards shall
4 each consist of seven members and five members shall
5 constitute a quorum. A new board shall be convened to
6 hear and determine each new appeal filed by a member
7 of the department. There may be more than one board
8 in existence at the same time meeting on different appeals.
9 A member of the retirement board is eligible to serve on
10 an appeals board.

11 The members of a board shall be chosen by lot by the
12 superintendent with one member to be so chosen from
13 among all the members of each of the seven ranks of
14 trooper through lieutenant, inclusive. No department
15 member may serve on an appeals board if his rank is the
16 same, or if he is a member of the same detachment, as the
17 member making the appeal. If the person making the
18 appeal is a member of one of the ranks of lieutenant
19 through trooper, inclusive, then a captain shall be chosen
20 by lot from among all members of that rank to serve on
21 the board. Within ten days after he has been notified of
22 his selection and assignment to serve on a board, a mem-
23 ber may for cause request to be relieved of such assign-
24 ment. The superintendent shall determine whether the
25 reasons alleged by the member are sufficient cause to re-
26 lieve the member of such assignment. If such request is
27 granted by the superintendent, a new board member shall
28 be selected by lot from the same rank to replace the mem-
29 ber who has been relieved of such assignment.

30 A chairman shall be selected by the members of the
31 board. Each member of a board shall be reimbursed for all
32 reasonable and necessary expenses actually incurred in
33 attending meetings of a board. All expenses of a board
34 shall be paid from appropriations to the department.

35 Within fifteen days after a member of the department
36 has received a notice of transfer or a statement of charges
37 and an order of suspension, demotion in rank or discharge
38 by the superintendent, he may appeal the transfer
39 or order to an appeals board by filing a written
40 notice of appeal with the superintendent. The super-

41 intendent shall promptly record and file each appeal,
42 select a board, notify each new board member of his
43 selection, and furnish to each board member a copy of the
44 notice or order appealed from and the notice of appeal. A
45 hearing by a board of appeals shall be held within thirty
46 days after the superintendent has received a member's
47 notice of appeal. At least fifteen days prior to the hearing
48 date, the board shall notify the superintendent and the
49 member making the appeal of the date, time and place of
50 the hearing.

51 Any member of the department who makes such an
52 appeal, as aforesaid, may be represented by an attorney or
53 by any member of the department or retired member who
54 is receiving benefits from the death, disability and retire-
55 ment fund. The superintendent may be represented by
56 counsel of his choice. In the appeal of a transfer, the mem-
57 ber has the burden of proof that the transfer is not for the
58 purpose of the operational needs of the department. In
59 any other appeal the superintendent has the burden of
60 proof as to the charges alleged. The procedure in any
61 hearing before the board shall be informal and without
62 adherence to the technical rules of evidence required in
63 proceedings in courts of record. All evidence submitted to
64 the board shall be submitted under oath. The chairman,
65 or any member of the board, shall have authority to ad-
66 minister oaths to witnesses, subpoena witnesses and com-
67 pel the production of books and papers pertinent to any
68 appeal or hearing authorized by this section.

69 If any person subpoenaed to appear at any appeal or
70 hearing shall refuse to appear, or shall refuse to answer
71 inquiries propounded at the appeal or hearing or shall fail
72 or refuse to produce books and papers which have been
73 subpoenaed which are pertinent to any appeal or hearing
74 authorized by this section, the board shall report the facts
75 to the circuit court of Kanawha County or the circuit
76 court of any county in which the hearing is being con-
77 ducted and such court may compel obedience to the sub-
78 poena as though such subpoena had been issued by such
79 court in the first instance. A person giving testimony at
80 an appeal or hearing authorized by this section shall not

81 be liable for such testimony given in good faith and with-
82 out malicious intent.

83 The board shall designate a reporter for any such hear-
84 ing who shall record and transcribe all the proceedings.
85 Upon his demand, the member making the appeal shall
86 have a public hearing on the charges and in the absence
87 of such demand, the board may determine whether or not
88 the hearing should be public. Any hearing may be con-
89 tinued, recessed or adjourned by the board.

90 The superintendent shall provide reasonable space for
91 the conduct of hearings. The charges of the reporter shall
92 be paid by the superintendent from available appropri-
93 ations. At the conclusion of the hearing, the board shall
94 determine whether or not the superintendent's order shall
95 be sustained. The board's decision shall be issued in writ-
96 ing, with copies thereof being sent by the board to the
97 superintendent and to the appealing member by certified
98 mail, return receipt requested. A hearing shall be con-
99 ducted by at least five members of the board and the de-
100 cision of the board shall be made by the majority vote of
101 all the members of the board.

102 Either party aggrieved by a decision of a board of
103 appeals may appeal the decision to the circuit court of
104 Kanawha County within sixty days of receipt of a copy
105 of the board's decision.

106 The court shall hear the appeal upon the record and
107 determine all questions submitted to it on appeal.

108 In the event any decision sustaining the superinten-
109 dent's order or notice is reversed upon judicial review,
110 which reversal is final, the superintendent shall return
111 the member to his status prior to the superintendent's
112 order or notice, with full payment of any compensation
113 withheld and with full credit for service between the date
114 the superintendent issued his order or notice and the date
115 of the final judicial decision reversing the decision of the
116 board.

CHAPTER 98

(Com. Sub. for H. B. 1280—By Mr. Martin, 35th District, and Mr. Caudle)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to amend and reenact sections one, three, four, seven, eight, eleven, thirteen and fifteen, article two of said chapter twenty-four; to further amend said article two by adding thereto three new sections, designated sections three-a, four-a and four-b; to amend and reenact sections six and seven, article three of said chapter twenty-four; to amend and reenact section one, article five of said chapter twenty-four; to amend and reenact section five, article two, chapter twenty-four-a of said code; to further amend said article two by adding thereto a new section, designated section two-a; to amend and reenact section six, article six of said chapter twenty-four-a; to amend and reenact section six, article four, chapter twenty-four-b of said code; and to amend and reenact sections one, two and three, article five of said chapter twenty-four-b, all relating to reorganization, composition, authority and operations of the public service commission; providing a legislative purpose and policy for regulating the operations of public utilities; requiring annual reports to the Legislature; creating a legislative oversight committee to monitor the public service commission; requiring that certain studies be made relating to natural gas and electric utilities; requiring the public service commission to submit a reorganization plan to the Legislature; mandating certain items to be included in such plan; requesting information on whether certain staff members of public service commission should be exempt from present civil service pay plans; providing for the reorganization plan to be effective unless disapproved by the Legislature; definitions; defining customers; reconstituting the public service commission; providing for the appointment and reappointment of the public service commissioners and their qualifications and salaries; providing grounds for their removal from office; allowing the public service commission chairman to serve as chairman at the will and pleasure of the governor;

requiring the general office of the commission to be located anywhere in the seat of government; deleting specified office hours for the commission; removing the decision making meetings of the public service commission from the state open meetings law; requiring that the orders of the commission include findings of fact and conclusions of law; allowing the commission to hire its own legal counsel; requiring hearing examiners to submit recommended orders to parties; allowing parties to a hearing before the commission an opportunity to submit proposed findings of fact, conclusions of law and briefs; allowing said parties the opportunity to file exceptions to the recommended orders and permitting oral arguments thereon; providing that the recommended order become the order of the commission if no exceptions have been timely filed; permitting pre-trial conferences, stipulations and depositions; limiting the authority of the commission to review and approve the rates and charges of municipally operated utilities; providing that a single hearing examiner decide public service district rate cases; requiring public utilities to give thirty days' notice prior to filing for a rate increase unless the commission waives the requirement; providing a new procedure for public utilities to change rates including elimination of rates being put into effect subject to refund except in limited, specific situations; providing a procedure of receivership for utilities and the appointment of a receiver; providing for the return of the utility after receivership and for the liquidation of the assets in certain cases; mandating the establishment of a uniform system of accounts and accounting for all public service districts and municipally owned utilities; requiring the public service commission to render a decision on applications for a certificate of public convenience and necessity within a certain time period; providing for the enforcement of certain federal acts; prohibiting rate increases based on automatic fuel adjustment clause; allowing the governor to designate the public service commission as the responsible or enforcing agency in this state for the enforcement of certain future federal acts; increasing the special license fees; requiring a permit from the public service commission prior to abandoning service; revising procedures for appeal; providing that all service penalties collected for violation of the gas pipeline safety provisions

be paid into the state treasury; removing specific organizing references in the supervision of gas pipeline safety; prohibiting the filing for a rate increase when a previous application for an increase is still pending before the commission; and providing for certain penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

24. Public Service Commission.

24A. Motor Carriers of Passengers and Property for Hire.

24B. Gas Pipeline Safety.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

Article

1. General Provisions.

2. Powers and Duties of Public Service Commission.

3. Duties and Privileges of Public Utilities Subject to Regulations of Commission.

5. Review of Commission's Action.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

- §24-1-2. Definitions.
- §24-1-3. Reconstitution and composition of the public service commission; appointment, qualifications, and disqualification of commissioners; removal from office; terms of office; vacancies.
- §24-1-4. Appointment, duties and compensation of secretary and other employees; hearings generally; outside employment by certain employees prohibited.
- §24-1-5. Seal to be adopted; collection and disposition of fees.
- §24-1-6. Office of commission; time and place of hearings; number of commissioners required for taking action.
- §24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; deliberations private; inscription on, use of and judicial notice of seal.
- §24-1-8. Legal counsel for the commission.
- §24-1-9. Recommended decision by hearing commissioner, hearing examiner or panel.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with joint committee on government and finance.

1 (a) It is the purpose and policy of the Legislature in en-
2 acting this chapter to confer upon the public service com-
3 mission of this state the authority and duty to enforce and
4 regulate the practices, services and rates of public utilities
5 in order to:

6 (1) Ensure fair and prompt regulation of public utilities in
7 the interest of the using and consuming public;

8 (2) Provide the availability of adequate, economical and
9 reliable utility services throughout the state;

10 (3) Encourage the well-planned development of utility
11 resources in a manner consistent with state needs and in
12 ways consistent with the productive use of the state's energy
13 resources, such as coal;

14 (4) Ensure that rates and charges for utility services are
15 just, reasonable, applied without unjust discrimination or
16 preference and based primarily on the costs of providing these
17 services; and

18 (5) Encourage energy conservation and the effective and
19 efficient management of regulated utility enterprises.

20 (b) The Legislature creates the public service commission

21 to exercise the legislative powers delegated to it. The public
22 service commission is charged with the responsibility for
23 appraising and balancing the interests of current and future
24 utility service customers, the general interests of the state's
25 economy and the interests of the utilities subject to its jurisdic-
26 tion in its deliberations and decisions.

27 (c) The Legislature encourages the public service com-
28 mission to explore and consider the potential benefits or
29 risks associated with the adoption in this state of emerging
30 concepts in utility rate making, service standards and rate
31 design. The commission is directed to conduct inquiries and hear-
32 ings into such concepts as cost of service, declining block rates,
33 time-of-day rates, peak load pricing, seasonal rates, lifeline
34 rates, interruptible rates, load management techniques, master
35 metering, automatic adjustment clauses, information to con-
36 sumers concerning rate schedules, procedures for termination
37 of service and advertising.

38 The public service commission shall report to the governor
39 and the Legislature regarding its policies and approach to
40 each of these areas not later than the first day of January,
41 one thousand nine hundred eighty-two.

42 (d) It is legislative policy to ensure that the Legislature and
43 the general public become better informed regarding the regu-
44 lation of public utilities in this state and the conduct of the
45 business of the public service commission. To aid in the
46 achievement of this policy, the public service commission an-
47 nually shall present to the joint committee on government and
48 finance, created by article three, chapter four of this code, or
49 a subcommittee designated by the joint committee, a manage-
50 ment summary report which describes in a concise manner:

51 (1) The major activities of the commission for the year
52 especially as such activities relate to the implementation of
53 the provisions of this chapter;

54 (2) Important policy decisions reached and initiatives un-
55 dertaken during the year;

56 (3) The current balance of supply and demand for natural
57 gas and electric utility services in the state and a forecast of the
58 probable balance for the next ten years; and

59 (4) Other information considered by the commission to
60 be important including recommendations for statutory reform
61 and the reasons for such recommendations.

62 (e) In addition to any other studies and reports required
63 to be conducted and made by the public service commission
64 pursuant to any other provision of this section, the commis-
65 sion shall study and initially report to the Legislature no later
66 than the first day of the regular session of the Legislature in
67 the year one thousand nine hundred eighty, upon:

68 (1) The extent to which natural gas wells or wells heretofore
69 supplying gas utilities in this state have been capped off or
70 shut in; the number of such wells, their probable extent of
71 future production and the reasons given and any justification
72 for, capping off or shutting in such wells, the reasons if any,
73 why persons engaged or heretofore engaged in the develop-
74 ment of gas wells in this state or the appalachian areas have
75 been discouraged from drilling, developing or selling the
76 production of such wells and whether there are fixed policies
77 by any utility or group of utilities to avoid the purchase of
78 natural gas produced in the appalachian region of the United
79 States generally and in West Virginia specifically.

80 (2) The extent of the export and import of natural gas
81 utility supplies in West Virginia.

82 (3) The cumulative effect of the practices mentioned in
83 subdivisions (1) and (2) of this subsection upon rates heretofore
84 and hereafter charged gas utility customers in West Virginia.

85 In carrying out the provisions of this section the commission
86 shall have jurisdiction over such persons, whether public
87 utilities or not, as may be in the opinion of the commission
88 necessary to the exercise of its mandate and may compel
89 attendance before it, take testimony under oath and compel the
90 production of papers or other documents. Upon reasonable re-
91 quest by the commission, all other state agencies shall cooper-
92 ate with the commission in carrying out the provisions and
93 requirements of this subsection.

94 (f) No later than the first day of the regular session of
95 the Legislature in the year one thousand nine hundred eighty,

96 the public service commission shall submit to the Legislature
97 a plan for internal reorganization which plan shall specifically
98 address the following:

99 (1) A division within the public service commission which
100 shall include the office of the commissioners, the hearing
101 examiners and such support staff as may be necessary to carry
102 out the functions of decision making and general supervision
103 of the commission, which functions shall not include advocacy
104 in cases before the commission;

105 (2) The creation of a division which shall act as an advo-
106 cate for the position of and in the interest of all customers;

107 (3) The means and procedures by which the division to be
108 created pursuant to the provisions of subdivision (2) of this
109 subsection shall protect the interests of each class of custo-
110 mers and the means by which the commission will assure that
111 such division will be financially and departmentally independ-
112 ent of the division created by subdivision (1) of this subsec-
113 tion;

114 (4) The creation of a division within the public service
115 commission which shall assume the duties and responsibilities
116 now charged to the commissioners with regard to motor
117 carriers which division shall exist separately from those divi-
118 sions set out in subdivisions (1) and (2) of this subsection and
119 which shall relieve the commissioners of all except minimal
120 administrative responsibilities as to motor carriers and which
121 plan shall provide for a hearing procedure to relieve the
122 commissioners from hearing motor carrier cases;

123 (5) Which members of the staff of the public service
124 commission shall be exempted from the salary schedules or
125 pay plan adopted by the civil service commission and identify
126 such staff members by job classification or designation, to-
127 gether with the salary or salary ranges for each such job
128 classification or designation;

129 (6) The manner in which the commission will strengthen its
130 knowledge and independent capacity to analyze key conditions
131 and trends in the industries it regulates extending from general
132 industry analysis and supply-demand forecasting to continuing

133 and more thorough scrutiny of the capacity planning, con-
134 struction management, operating performance and financial
135 condition of the major companies within these industries.

136 Such plan shall be based on the concept that each of the
137 divisions mentioned in subdivisions (1), (2) and (4) of this
138 subsection shall exist independently of the others and the
139 plan shall discourage ex parte communications between them
140 by such means as the commission shall direct, including, but
141 not limited to, separate clerical and professional staffing for
142 each division. Further, the public service commission is
143 directed to incorporate within the said plan to the fullest
144 extent possible the recommendations presented to the sub-
145 committee on the public service commission of the joint
146 committee on government and finance in a final report dated
147 February, one thousand nine hundred seventy-nine and en-
148 titled "A Plan For Regulatory Reform and Management
149 Improvement."

150 The commission shall before the fifth day of January, one
151 thousand nine hundred eighty, adopt said plan by order which
152 order shall promulgate the same as a rule of the commission to
153 be effective upon the date specified in said order, which date
154 shall be no later than the thirty-first day of December, one
155 thousand nine hundred eighty. Certified copies of such order
156 and rule shall be filed on the first day of the regular session
157 of the Legislature, one thousand nine hundred eighty, by the
158 chairman of the commission with the clerk of each house of
159 the Legislature, the governor and the secretary of state. The
160 chairman of the commission shall also file with the office of
161 the secretary of state the receipt of the clerk of each house and
162 of the governor, which receipt shall evidence compliance with
163 this section.

164 Upon the filing of a certified copy of such order and rule,
165 the clerk of each house of the Legislature shall report the
166 same to their respective houses and the presiding officer
167 thereof shall refer the same to appropriate standing com-
168 mittee or committees.

169 Within the limits of funds appropriated therefor, the rule
170 of the public service commission shall be effective upon the

171 date specified in the order of the commission promulgating it
172 unless an alternative plan be adopted by general law or unless
173 the rule is disapproved by a concurrent resolution of the
174 Legislature adopted prior to adjournment sine die of the
175 regular session of the Legislature to be held in the year one
176 thousand nine hundred eighty: *Provided*, That if such rule is
177 approved in part and disapproved in part by a concurrent
178 resolution of the Legislature adopted prior to such adjourn-
179 ment, such rule shall be effective to the extent and only to the
180 extent that the same is approved by such concurrent resolution.

181 The rules promulgated and made effective pursuant to this
182 section shall be effective notwithstanding any other provisions
183 of this code for the promulgation of rules or regulations.

184 (g) The public service commission is hereby directed to
185 cooperate with the joint committee on government and finance
186 of the Legislature in its review, examination and study of the
187 administrative operations and enforcement record of the rail-
188 road safety division of the public service commission and
189 any similar studies.

§24-1-2. Definitions.

1 Except where a different meaning clearly appears from the
2 context the words "public utility" when used in this chapter
3 shall mean and include any person or persons, or association
4 of persons, however associated, whether incorporated or not,
5 including municipalities, engaged in any business, whether
6 herein enumerated or not, which is, or shall hereafter be held
7 to be, a public service. Whenever in this chapter the words
8 "commission" or "public service commission" occur such
9 word or words shall, unless a different intent clearly appears
10 from the context, be taken to mean the public service com-
11 mission of West Virginia. Whenever used in this chapter,
12 "customer" shall mean and include any person, firm, corpor-
13 ation, municipality, public service district or any other entity
14 who purchases a product or services of any utility and shall
15 include any such person, firm, corporation, municipality, pub-
16 lic service district or any other entity who purchases such
17 services or product for resale.

§24-1-3. Reconstitution and composition of the public service commission; appointment, qualifications, and disqualification of commissioners; removal from office; terms of office; vacancies.

1 (a) The public service commission of West Virginia, hereto-
2 fore established, is continued and directed as provided by this
3 chapter, chapter twenty-four-a and chapter twenty-four-b. The
4 public service commission may sue and be sued by that name.
5 Such public service commission shall consist of three members
6 who shall be appointed by the governor with the advice and
7 consent of the Senate. The commissioners shall be citizens and
8 residents of this state and at least one of them shall be duly
9 licensed to practice law in West Virginia, of not less than ten
10 years' actual experience at the bar. No more than two of said
11 commissioners shall be members of the same political party.
12 Each commissioner shall, before entering upon the duties of his
13 office, take and subscribe to the oath provided by section five,
14 article four of the constitution, which oath shall be filed in the
15 office of the secretary of state. The governor shall designate one
16 of the commissioners to serve as chairman at the governor's will
17 and pleasure. The chairman shall be the chief administrative of-
18 ficer of the commission. The governor may remove any com-
19 missioner only for incompetency, neglect of duty, gross immoral-
20 ity, malfeasance in office, or violation of subsection (c) of
21 this section.

22 (b) The unexpired terms of members of the public service
23 commission at the time this subsection becomes effective are
24 continued through the thirtieth day of June, one thousand nine
25 hundred seventy-nine. In accordance with the provisions of sub-
26 section (a) of this section, the governor shall appoint three com-
27 missioners, one for a term of two years, one for a term of four
28 years and one for a term of six years, all the terms beginning on
29 the first day of July, one thousand nine hundred seventy-nine.
30 All future appointments are for terms of six years, except that
31 an appointment to fill a vacancy is for the unexpired term only.
32 The commissioners whose terms are terminated by the provi-
33 sions of this subsection are eligible for reappointment.

34 (c) No person while in the employ of, or holding any of-
35 ficial relation to, any public utility subject to the provisions

36 of this chapter, or holding any stocks or bonds thereof, or who
37 is pecuniarily interested therein, may serve as a member of the
38 commission or as an employee thereof. Nor may any such com-
39 missioners be a candidate for or hold public office, or be a
40 member of any political committee, while acting as such
41 commissioner; nor may any commissioner or employee of said
42 commission receive any pass, free transportation or other thing
43 of value, either directly or indirectly, from any public utility
44 or motor carrier subject to the provisions of this chapter. In
45 case any of the commissioners becomes a candidate for any
46 public office or a member of any political committee, the
47 governor shall remove him from office and shall appoint a
48 new commissioner to fill the vacancy created.

49 (d) For the administration of this chapter, chapter twenty-
50 four-a and chapter twenty-four-b of this code, each commis-
51 sioner shall receive a salary of twenty-six thousand five
52 hundred dollars a year payable in equal monthly installments
53 for the duration of the terms expiring the thirtieth day of June,
54 one thousand nine hundred seventy-nine. Effective the first
55 day of July, one thousand nine hundred seventy-nine, for the
56 administration of this chapter, chapter twenty-four-a and
57 chapter twenty-four-b of this code, each commissioner shall
58 receive a salary of thirty-two thousand five hundred dollars
59 a year to be paid in monthly installments from the special
60 funds in such amounts as follows:

61 (1) From the public service commission fund collected
62 under the provisions of section six, article three of this chap-
63 ter, twenty-five thousand one hundred forty dollars;

64 (2) From the public service commission motor carrier fund
65 collected under the provisions of section six, article six, chap-
66 ter twenty-four-a of this code, six thousand one hundred thirty-
67 five dollars; and

68 (3) From the public service commission gas pipeline safety
69 fund collected under the provisions of section three, article
70 five, chapter twenty-four-b of this code, one thousand two
71 hundred twenty-five dollars.

72 In addition to this salary provided for all commissioners,
73 the chairman of the commission shall receive two thousand

74 five hundred dollars a year to be paid in monthly installments
75 from the public service commission fund collected under the
76 provisions of section six, article three of this chapter.

§24-1-4. Appointment, duties and compensation of secretary and other employees; hearings generally; outside employment by certain employees prohibited.

1 The commission shall appoint a secretary and such other
2 employees as may be necessary to carry out the provisions of
3 this chapter and shall fix their respective salaries or compen-
4 sations. It shall be the duty of the secretary to keep a full and
5 true record of all proceedings, acts, orders and judgments of
6 the commission, to issue all necessary process, returns and
7 notices, to keep all books, maps, documents and papers ordered
8 filed by the commission, and all orders made by the com-
9 mission or approved and confirmed by it and ordered to be
10 filed; and he shall be responsible to the commission for the
11 safe custody and preservation of all such documents in his
12 office. He may administer oaths in all parts of the state, so
13 far as the exercise of such power is properly incidental to the
14 performance of his duty or that of the commission.

15 The commission may designate such of its employees as it
16 deems necessary to hold hearings, held or required by this
17 chapter, and to take evidence at such hearings, which em-
18 ployees are hereby empowered to subpoena witnesses, admin-
19 ister oaths, take testimony, require the production of docu-
20 mentary evidence and exercise such other powers and per-
21 form such other duties as may be delegated to them and
22 required by the commission, in any proceeding or examination
23 instituted or conducted by the commission under this chapter,
24 at any designated place of hearing within the state.

25 Any commissioner or person employed by the commis-
26 sion other than on a part-time basis shall devote full time
27 to the performance of his duties as such commissioner or
28 employee during the regular working hours as set by the
29 commission.

§24-1-5. Seal to be adopted; collection and disposition of fees.

1 The commission shall adopt a seal which shall be affixed

2 to all papers under such regulations as the commission may
3 prescribe. The commission shall likewise prescribe a schedule
4 of fees to be charged for the certification of all records and
5 papers, and sums to be paid witnesses and other costs neces-
6 sary and incident to hearings before it and order the same paid
7 by the unsuccessful party. All sums collected by the secretary,
8 except witness fees, shall be paid by him into the state trea-
9 sury and be credited to the public service commission fund
10 provided for in section six, article three of this chapter. The
11 witness fees shall be paid to the person to whom they are al-
12 lowed. The sums to be paid into the public service commission
13 fund representing the collection of any month shall be so
14 paid on or before the tenth of the following month.

**§24-1-6. Office of commission; time and place of hearings; num-
ber of commissioners required for taking action.**

1 The general office of the commission shall be kept at the
2 seat of government and in charge of the secretary or his de-
3 puty. Hearings and the taking of evidence may be had at such
4 times and places and in such manner in each particular case
5 as the commission may designate.

6 The concurrent judgment of two of the commissioners,
7 when in session as the commission, shall be deemed the action
8 of the commission, and a vacancy in the commission shall not
9 affect the right or duty of the remaining commissioners to
10 function as a commission.

**§24-1-7. Rules of procedure; commission not bound by rules of
evidence or pleadings; deliberations private; inscrip-
tion on, use of and judicial notice of seal.**

1 The commission shall prescribe such rules and regulations
2 as may be necessary to carry out the provisions of this chapter,
3 including rules of procedure and for taking evidence in all
4 matters that may come before it, and enter such orders as may
5 be just and lawful: *Provided*, That no such rule or regulation
6 shall be effective unless promulgated pursuant to the provi-
7 sions of sections one through ten, article three, chapter twenty-
8 nine-a of this code: *Provided, however*, That no such rule or
9 regulation shall become effective until sixty days after its

10 final adoption or until the effective date proposed by the com-
11 mission, whichever is later: *Provided further*, That any rules
12 and regulations promulgated prior to the effective date of this
13 section shall remain in full force and effect unless changed,
14 modified or repealed in accordance herewith. The rules and
15 regulations promulgated hereunder by the public service com-
16 mission shall not be subject to the legislative rule-making re-
17 view procedures established in sections eleven through fifteen,
18 article three, chapter twenty-nine-a of this code. In the investi-
19 gations, preparations and hearings of cases, the commission
20 shall not be bound by the technical rules of pleading and evi-
21 dence, but in that respect it may exercise such discretion as
22 will facilitate its efforts to understand and learn all the facts
23 bearing upon the right and justice of the matters before it.

24 Meetings of the commission during which it makes a deci-
25 sion or deliberates toward a decision on any matter are exempt
26 from the requirements of article nine-a, chapter six of this
27 code, notwithstanding any other provisions of this code to the
28 contrary.

29 All orders of the commission shall set forth separately
30 findings of fact and conclusions of law, which findings of fact
31 shall make specific reference to the evidence in the record
32 which supports such findings.

33 The commission shall have a seal bearing the following
34 inscription: "The Public Service Commission of West Virginia."
35 The seal shall be affixed to all writs and authentications of
36 copies of records, and to such other instruments as the com-
37 mission shall direct. All courts shall take judicial notice of
38 said seal.

§24-1-8. Legal counsel for the commission.

1 The commission may employ counsel to represent it in
2 proceedings before it on application, complaint or other-
3 wise, and proceedings of any nature in any and all courts
4 or before administrative or executive boards and to act as
5 legal advisers to the commission in all matters for which their
6 services, in the opinion of the commission, are required.
7 The compensation of such counsel shall be fixed by the
8 commission and shall be paid as are other employees of the

9 commission. The commission shall notify the attorney general
10 of any action or suit brought against the commission.

**§24-1-9. Recommended decision by hearing commissioner, hearing
examiner or panel.**

1 (a) Any order recommended by a single hearing commis-
2 sioner, a hearing examiner or a panel consisting of a hearing
3 examiner and a single commissioner with respect to any matter
4 referred for hearing shall be in writing and shall set forth
5 separately findings of fact and conclusions of law, which
6 findings of fact shall make specific reference to the evidence
7 in the record which supports such findings, and shall be filed
8 with the commission. A copy of such recommended order
9 shall be served upon the parties who have appeared in the
10 proceeding.

11 (b) Before any order is recommended, the parties shall be
12 afforded an opportunity to submit, within the time prescribed
13 by the hearing commissioner, hearing examiner or panel
14 proposed findings of fact and conclusions of law and briefs.

15 (c) Within the time prescribed, the parties shall be af-
16 farded an opportunity to file exceptions to the recommended
17 order and a brief in support thereof, provided the time so fixed
18 shall be not less than fifteen days from the date of mail-
19 ing by certified mail of such recommended order to the
20 parties.

21 (d) In all proceedings in which exceptions have been filed
22 to a recommended order, the commission, before issuing its
23 final order, may afford the parties an opportunity for oral
24 argument. When exceptions are filed, as herein provided, it
25 shall be the duty of the commission to consider the same and
26 if sufficient reason appears therefor, to grant such review or
27 make such order or hold or authorize such further hearing
28 or proceeding as may be necessary or proper to carry out
29 the purposes of this chapter. The commission, after review,
30 upon the whole record, or as supplemented by a further hear-
31 ing, shall decide the matter in controversy and make ap-
32 propriate order thereon.

33 (e) When no exceptions are filed within the time specified,

34 such recommended order shall become the order of the com-
35 mission five days following the expiration of the period for
36 filing exceptions unless the order is stayed or postponed by the
37 commission: *Provided*, That the commission may, on its own
38 motion before such order becomes the order of the com-
39 mission, review any such matter and take action thereon as if
40 exceptions thereto had been filed.

41 (f) The commission, a hearing commissioner, a hearing
42 examiner or panel to whom a matter is referred may expedite
43 the hearing and decision of any case if the public interest so
44 requires by the use of pre-trial conferences, stipulations and
45 agreements, prepared testimony, depositions, daily transcripts
46 of evidence, trial briefs and oral argument in lieu of briefs,
47 as appropriate.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COM- MISSION.

- §24-2-1. Jurisdiction of commission; waiver of jurisdiction.
- §24-2-3. General power of commission with respect to rates.
- §24-2-3a. Advance notice of filing of general rate case required.
- §24-2-4. Procedure for changing rates prior to July one, one thousand nine hundred eighty-one.
- §24-2-4a. Procedure for changing rates after June thirtieth, one thousand nine hundred eighty-one.
- §24-2-4b. Procedures for changing rates of municipally operated public utilities; filing requirements; limited public service commission authority.
- §24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.
- §24-2-8. System of accounts to be kept by public utilities; uniform accounting system for public service districts and municipally owned public utilities.
- §24-2-11. Requirements for certificate of public convenience and necessity.
- §24-2-13. Enforcement of federal acts.
- §24-2-15. Automatic adjustment clauses or fuel adjustment clauses prohibited.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

1 The jurisdiction of the commission shall extend to all
2 public utilities in this state, and shall include any utility
3 engaged in any of the following public services:

4 Common carriage of passengers or goods, whether by air,

5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly
7 by land, water or air; transportation of oil, gas or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through
14 a distributing utility; supplying water, gas or electricity, by
15 municipalities or others; sewer systems servicing twenty-five or
16 more persons or firms other than the owner of the sewer
17 systems; any public service district created under the pro-
18 visions of article thirteen-a, chapter sixteen of this code; toll
19 bridges, wharves, ferries; and any other public service: *Pro-*
20 *vided*, That the jurisdiction the commission may exercise
21 over the rates and charges of municipally operated public
22 utilities is limited to that authority granted the commission in
23 section four-b of this article: *Provided, however*, That the
24 decision making authority granted to the commission in sec-
25 tions four and four-a of this chapter shall, in respect to an
26 application filed by a public service district, be delegated to a
27 single hearing examiner appointed from the commission staff,
28 which hearing examiner shall be authorized to carry out all
29 decision making duties assigned to the commission by said
30 sections, and to issue orders having the full force and effect
31 of orders of the commission.

32 The commission may, upon application, waive its jurisdic-
33 tion and allow a utility operating in an adjoining state to
34 provide service in West Virginia when:

35 (1) An area of West Virginia cannot be practicably and
36 economically served by a utility licensed to operate within
37 the state of West Virginia;

38 (2) Said area can be provided with utility service by a
39 utility which operates in a state adjoining West Virginia;

40 (3) The utility operating in the adjoining state is regulated
41 by a regulatory agency or commission of the adjoining state;
42 and

43 (4) The number of customers to be served is not substantial.

44 The rates the out-of-state utility charges West Virginia
45 customers shall be the same as the rate the utility is duly
46 authorized to charge in the adjoining jurisdiction.

47 The commission, in the case of any such utility, may revoke
48 its waiver of jurisdiction for good cause.

§24-2-3. General power of commission with respect to rates.

1 The commission shall have power to enforce, originate,
2 establish, change and promulgate tariffs, rates, joint rates,
3 tolls and schedules for all public utilities: *Provided*, That the
4 commission may exercise such rate authority over municipal
5 utilities only under the circumstances set forth in section
6 four-b of this article. And whenever the commission shall,
7 after hearing, find any existing rates, tolls, tariffs, joint
8 rates or schedules unjust, unreasonable, insufficient or un-
9 justly discriminatory or otherwise in violation of any of
10 the provisions of this chapter, the commission shall by an
11 order fix reasonable rates, joint rates, tariffs, tolls or schedules
12 to be followed in the future in lieu of those found to be un-
13 just, unreasonable, insufficient or unjustly discriminatory or
14 otherwise in violation of any provisions of law, and the said
15 commission, in fixing the rate of any railroad company, may
16 fix a fair, reasonable and just rate to be charged on any branch
17 line thereof, independent of the rate charged on the main line
18 of such railroad.

§24-2-3a. Advance notice of filing of general rate case required.

1 All public utilities subject to the provisions of section four
2 or four-a of this article, intending to institute a general rate
3 case, shall give the commission not less than thirty days'
4 notice before proceeding under the provisions of those sections
5 unless the commission modifies or waives such notice re-
6 quirement.

§24-2-4. Procedure for changing rates prior to July one, one thousand nine hundred eighty-one.

1 No public utility subject to this chapter, except those
2 utilities subject to the provisions of section four-b of this

3 article, shall change, suspend or annul any rate, joint rate,
4 charge, rental or classification except after thirty days' notice
5 to the commission and the public, which notice shall plainly
6 state the changes proposed to be made in the schedule then
7 in force and the time when the changed rates or charges
8 shall go into effect; but the commission may enter an order
9 suspending the proposed rate as hereinafter provided. The
10 proposed changes shall be shown by printing new schedules,
11 or shall be plainly indicated upon the schedules in force at
12 the time, and kept open to public inspection: *Provided*, That
13 the commission may, in its discretion, and for good cause
14 shown, allow changes upon less time than the notice herein
15 specified, or may modify the requirements of this section in
16 respect to publishing, posting and filing of tariffs, either by
17 particular instructions or by general order.

18 Whenever there shall be filed with the commission any
19 schedule stating a change in the rates or charges, or joint
20 rates or charges, or stating a new individual or joint rate
21 or charge or joint classification or any new individual or
22 joint regulation or practice affecting any rate or charge,
23 the commission shall have authority, either upon complaint
24 or upon its own initiative without complaint, to enter upon
25 a hearing concerning the propriety of such rate, charge, classi-
26 fication, regulation or practice; and, if the commission so
27 orders, it may proceed without answer or other form of
28 pleading by the interested parties, but upon reasonable notice,
29 and, pending such hearing and the decision thereon, the
30 commission, upon filing with such schedule and delivering to
31 the public utility affected thereby a statement in writing of
32 its reasons for such suspension, may suspend the operation
33 of such schedule and defer the use of such rate, charge,
34 classification, regulation or practice, but not for a longer
35 period than one hundred and twenty days beyond the time
36 when such rate, charge, classification, regulation or practice
37 would otherwise go into effect; and after full hearing, whether
38 completed before or after the rate, charge, classification,
39 regulation or practice goes into effect, the commission may
40 make such order in reference to such rate, charge, classifica-
41 tion, regulation or practice as would be proper in a pro-
42 ceeding initiated after the rate, charge, classification, regula-

43 tion or practice had become effective: *Provided*, That if
44 any such hearing and decision thereon cannot be concluded
45 within the period of suspension, as above stated, such rate,
46 charge, classification, regulation or practice shall go into
47 effect at the end of such period. In such case the com-
48 mission may require such public utility to enter into a
49 bond in an amount deemed by the commission to be rea-
50 sonable and conditioned for the refund to the persons or
51 parties entitled thereto of the amount of the excess, plus
52 interest at the rate of not less than seven percent per
53 annum, as may be specified by the commission, if such
54 rate so put into effect is subsequently determined to be
55 higher than those finally fixed for such utility. In speci-
56 fying the applicable interest rate, the commission shall be
57 guided by the interest rate which such public utility would
58 in all probability have to agree to pay if such public
59 utility at that time borrowed in the marketplace a sum
60 of money equivalent to the amount of money the com-
61 mission estimates the increase in rates will produce
62 between the effective date of such increase and the
63 anticipated date the rates will be finally fixed for such public
64 utility, it being intended that a public utility should be dis-
65 couraged from imposing higher rates than it should reasonably
66 anticipate will be finally fixed as a means in effect of bor-
67 rowing money at a rate of interest less than such public
68 utility would have to agree to pay if it borrowed money in the
69 marketplace. No such accrued interest paid on any such
70 refund shall be deemed part of the cost of doing business in
71 a subsequent application for changing rates or any decision
72 thereon. At any hearing involving a rate sought to be in-
73 creased or involving the change of any fare, charge, classifica-
74 tion, regulation or practice, the burden of proof to show that
75 the increased rate or proposed increased rate, or the proposed
76 change of fare, charge, classification, regulation or practice
77 is just and reasonable shall be upon the public utility making
78 application for such change. When in any case pending
79 before the commission all evidence shall have been taken,
80 and the hearing completed, the commission shall, within
81 three months, render a decision in such case.

82 Where more than twenty members of the public are affected
83 by a proposed change in rates, it shall be a sufficient notice
84 to the public within the meaning of this section if such
85 notice is published as a Class II legal advertisement in com-
86 pliance with the provision of article three, chapter fifty-nine
87 of this code, and the publication area for such publication
88 shall be the community where the majority of the resident
89 members of the public affected by such change reside or,
90 in case of nonresidents, have their principal place of business
91 within this state. The provisions of this section shall expire
92 on and be of no further force and effect after the thirtieth
93 day of June, one thousand nine hundred eighty-one, except
94 that as to any case pending on said date in which the sus-
95 pension period has expired and rates are in effect under bond
96 such case shall be proceeded with in accordance with this
97 section; as to any other case pending on said date, the com-
98 mission shall treat the case as filed anew on the first day of
99 July, one thousand nine hundred eighty-one, except that it
100 shall not be necessary for any new process or notice to be
101 served or published.

§24-2-4a. Procedure for changing rates after June thirtieth, one thousand nine hundred eighty-one.

1 After the thirtieth day of June, one thousand nine hundred
2 eighty-one, no public utility subject to this chapter except
3 those utilities subject to the provisions of section four-b of
4 this article, shall change, suspend or annul any rate, joint
5 rate, charge, rental or classification except after thirty days'
6 notice to the commission and the public, which notice shall
7 plainly state the changes proposed to be made in the schedule
8 then in force and the time when the changed rates or charges
9 shall go into effect; but the commission may enter an order
10 suspending the proposed rate as hereinafter provided. The
11 proposed changes shall be shown by printing new schedules,
12 or shall be plainly indicated upon the schedules in force at the
13 time, and kept open to public inspection: *Provided*, That the
14 commission may, in its discretion, and for good cause shown,
15 allow changes upon less time than the notice herein specified,
16 or may modify the requirements of this section in respect to

17 publishing, posting and filing of tariffs, either by particular in-
18 structions or by general order.

19 Whenever there shall be filed with the commission any
20 schedule stating a change in the rates or charges, or joint
21 rates or charges, or stating a new individual or joint rate or
22 charge or joint classification or any new individual or joint
23 regulation or practice affecting any rate or charge, the com-
24 mission may either upon complaint or upon its own initiative
25 without complaint, enter upon a hearing concerning the pro-
26 priety of such rate, charge, classification, regulation or practice;
27 and, if the commission so orders, it may proceed without
28 answer or other form of pleading by the interested parties, but
29 upon reasonable notice, and, pending such hearing and the
30 decisions thereon, the commission, upon filing with such
31 schedule and delivering to the public utility affected thereby
32 a statement in writing of its reasons for such suspension,
33 may suspend the operation of such schedule and defer the use
34 of such rate, charge, classification, regulation or practice,
35 but not for a longer period than two hundred and seventy days
36 beyond the time when such rate, charge, classification, regula-
37 tion or practice would otherwise go into effect; and after full
38 hearing, whether completed before or after the rate, charge,
39 classification, regulation or practice goes into effect, the com-
40 mission may make such order in reference to such rate, charge,
41 classification, regulation or practice as would be proper in a
42 proceeding initiated after the rate, charge, classification, regu-
43 lation or practice had become effective: *Provided*, That in the
44 case of a public utility having two thousand five hundred
45 customers or less and which is not principally owned by any
46 other public utility corporation or public utility holding
47 corporation, the commission may suspend the operation of
48 such schedule and defer the use of such rate, charge, classi-
49 fication, regulation or practice, but not for a longer period
50 than one hundred twenty days, beyond the time when such
51 rate, charge, classification, regulation or practice would other-
52 wise go into effect; and in the case of a public utility
53 having more than two thousand five hundred customers, but
54 not more than five thousand customers, and which is not
55 principally owned by any other public utility corporation or
56 public utility holding corporation, the commission may suspend

57 the operation of such schedule and defer the use of such rate,
58 charge, classification, regulation or practice, but not for a
59 longer period than one hundred fifty days, beyond the time
60 when such rate, charge, classification, regulation or practice
61 would otherwise go into effect; and in the case of a public
62 utility having more than five thousand customers, but not
63 more than seven thousand five hundred customers, and which
64 is not principally owned by any other public utility corpora-
65 tion or public utility holding corporation, the commission may
66 suspend the operation of such schedule and defer the use of
67 such rate, charge, classification, regulation or practice, but not
68 for a longer period than one hundred eighty days, beyond the
69 time when such rate, charge, classification, regulation or
70 practice would otherwise go into effect; and after full hearing,
71 whether completed before or after the rate, charge, classifi-
72 cation, regulation or practice goes into effect, the commission
73 may make such order in reference to such rate, charge, classi-
74 fication, regulation or practice as would be proper in a pro-
75 ceeding initiated after the rate, charge, classification, regula-
76 tion or practice had become effective: *Provided, however,* That
77 if any such hearing and decision thereon is not concluded with-
78 in the periods of suspension, as above stated, such rate, charge,
79 classification, regulation or practice shall go into effect at the
80 end of such period not subject to refund: *Provided further,*
81 That if any such rate, charge, classification, regulation or
82 practice goes into effect because of the failure of the commis-
83 sion to reach a decision, the same shall not preclude the com-
84 mission from rendering a decision with respect thereto which
85 would disapprove, reduce or modify any such proposed rate,
86 charge, classification, regulation or practice, in whole or in
87 part, but any such disapproval, reduction or modification shall
88 not be deemed to require a refund to the customers of such
89 utility as to any rate, charge, classification, regulation or prac-
90 tice so disapproved, reduced or modified. The fact of any rate,
91 charge, classification, regulation or practice going into effect
92 by reason of the commission's failure to act thereon shall not
93 affect the commission's power and authority to subsequently
94 act with respect to any such application or change in any rate,
95 charge, classification, regulation or practice. Any rate, charge,
96 classification, regulation or practice which shall be approved,

97 disapproved, modified or changed, in whole or in part, by
98 decision of the commission shall remain in effect as so ap-
99 proved, disapproved, modified or changed during the period
100 or pendency of any subsequent hearing thereon or appeal there-
101 from. Orders of the commission affecting rates, charges, classi-
102 fications, regulations or practices which have gone into effect
103 automatically at the end of the suspension period are prospec-
104 tive in effect only.

105 At any hearing involving a rate sought to be increased or
106 involving the change of any rate, charge, classification, regu-
107 lation or practice, the burden of proof to show that the in-
108 creased rate or proposed increased rate, or the proposed
109 change of rate, charge, classification, regulation or practice
110 is just and reasonable shall be upon the public utility making
111 application for such change. When in any case pending before
112 the commission all evidence shall have been taken and the
113 hearing completed, the commission shall render a decision in
114 such case. The failure of the commission to render a decision
115 with respect to any such proposed change in any such rate,
116 charge, classification, regulation or practice within the various
117 time periods specified in this section after the application there-
118 for shall constitute neglect of duty on the part of the commis-
119 sion and each member thereof.

120 Where more than twenty members of the public are affected
121 by a proposed change in rates, it shall be a sufficient notice
122 to the public within the meaning of this section if such notice
123 is published as a Class II legal advertisement in compliance
124 with the provisions of article three, chapter fifty-nine of this
125 code, and the publication area for such publication shall be
126 the community where the majority of the resident members of
127 the public affected by such change reside or, in case of nonresi-
128 dents, have their principal place of business within this state.

129 The commission may order rates into effect subject to
130 refund, plus interest in the discretion of the commission, in
131 cases in which the commission determines that a temporary
132 or interim rate increase is necessary for the utility to avoid
133 financial distress, or in which the costs upon which these
134 rates are based are subject to modification by the commission

135 or another regulatory commission and to refund to the public
136 utility. In such case the commission may require such public
137 utility to enter into a bond in an amount deemed by the com-
138 mission to be reasonable and conditioned upon the refund to
139 the persons or parties entitled thereto of the amount of the
140 excess if such rates so put into effect are subsequently deter-
141 mined to be higher than those finally fixed for such utility.

142 No utility may make application for a general rate increase
143 while another general rate application is pending before the
144 commission and not finally acted upon, except pursuant to the
145 provisions of the next preceding paragraph of this section. The
146 provisions of this paragraph shall not be construed so as to
147 prohibit any such rate application from being made while a
148 previous application which has been finally acted upon by the
149 commission is pending before or upon appeal to the West Vir-
150 ginia supreme court of appeals.

**§24-2-4b. Procedures for changing rates of municipally operated
public utilities; filing requirements; limited public
service commission authority.**

1 (a) Municipally operated public utilities are not subject to
2 the rate approval provisions of section four or four-a of this
3 chapter but are subject to the limited rate provisions of this
4 section.

5 (b) All rates and charges set by municipally operated public
6 utilities shall be just, reasonable, applied without unjust dis-
7 crimination or preference and based primarily on the costs of
8 providing these services. Such rates and charges shall be adopt-
9 ed by municipal ordinance to be effective not sooner than
10 forty-five days after adoption. Such rates and charges shall be
11 filed with the commission together with such information show-
12 ing the basis of such rates and charges as the commission con-
13 siders necessary. Any change in such rates and charges with
14 updated information shall be filed with the commission. The
15 municipality shall set the date when any new rate or charge is
16 to go into effect.

17 Any customer aggrieved by the changed rate or charge may,
18 within thirty days of the adoption of the ordinance changing

19 said rate or charge, present to the commission a petition signed
20 by not less than twenty-five percent of the customers served
21 by such municipally operated public utility. The filing of said
22 petition with the commission shall suspend the adoption of the
23 rate change contained in the ordinance for a period of one
24 hundred twenty days, or until an order is issued as provided
25 herein. The commission shall forthwith appoint a hearing
26 examiner from its staff to review the grievances raised by the
27 petitioners. Said hearing examiner shall conduct a public
28 hearing, and shall within one hundred twenty days from the
29 date of filing of the petition, issue an order approving, dis-
30 approving or modifying in whole or in part, the rate or charge
31 contained in the ordinance. Such an order shall have the full
32 force and effect of an order issued by the commission.

33 (c) If a municipally operated public utility serves customers
34 outside its municipal corporate limits and these customers are
35 charged at rates different from those which customers within
36 its corporate limits are charged, the public service commission
37 shall review and approve or order changes in such rates if the
38 following conditions are met:

39 (1) The complaining customers are those who reside outside
40 the boundaries of the municipality which set the rates;

41 (2) These customers allege that the rates to which they
42 object are discriminatory; and

43 (3) The request for a review of the rate or charge to which
44 objection has been made is received by the public service
45 commission within thirty days of the effective date of the
46 adoption of the ordinance changing such rate or charge.

47 (d) Upon receipt of a request for a review of the rates under
48 the provisions of subsection (b) or (c) of this section, the com-
49 mission may exercise the power granted to it under the pro-
50 visions of section three of this article. The commission may
51 determine the method by which such rates are reviewed and
52 may grant and conduct a de novo hearing on the matter if the
53 customer or municipality requests such a hearing.

§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.

1 (a) Whenever, under the provisions of this chapter, the
2 commission shall find any regulations, measurements, prac-
3 tices, acts or services to be unjust, unreasonable, insufficient
4 or unjustly discriminatory, or otherwise in violation of any
5 provisions of this chapter, or shall find that any service is
6 inadequate, or that any service which is demanded cannot be
7 reasonably obtained, the commission shall determine and
8 declare, and by order fix reasonable measurements, regula-
9 tions, acts, practices or services, to be furnished, imposed,
10 observed and followed in the state in lieu of those found to
11 be unjust, unreasonable, insufficient, or unjustly discrimina-
12 tory, inadequate or otherwise in violation of this chapter, and
13 shall make such other order respecting the same as shall be
14 just and reasonable.

15 (b) If the public service commission shall determine that
16 any utility is unable or unwilling to adequately serve its
17 customers or has been actually or effectively abandoned by
18 its owners, or that its management is grossly and willfully
19 inefficient, irresponsible or unresponsive to the needs of its
20 customers, the commission may petition to the circuit court
21 of any county wherein the utility does business for an order
22 attaching the assets of the utility and placing such utility
23 under the sole control and responsibility of a receiver. If
24 the court determines that the petition is proper in all respects
25 and finds, after a hearing thereon, that the allegations
26 contained in the petition are true, it shall grant the same
27 and shall order that the utility be placed in receivership.
28 The court, in its discretion and in consideration of the
29 recommendation of the commission, shall appoint a receiver
30 who shall be a responsible individual, partnership or corpora-
31 tion knowledgeable in public utility affairs and who shall
32 maintain control and responsibility for the running and man-
33 agement of the affairs of such utility. In so doing, the receiver
34 shall operate the utility so as to preserve the assets of the
35 utility and to serve the best interests of its customers. The
36 receiver shall be compensated from the assets of said utility
37 in an amount to be determined by the court.

38 Control of and responsibility for said utility shall remain
39 in the receiver until the same can, in the best interest of the
40 customers, be returned to the owners, transferred to other
41 owners or assumed by another utility or public service cor-
42 poration: *Provided*, That if the court after hearing, deter-
43 mines that control of and responsibility for the affairs of the
44 utility should not, in the best interests of its customers, be
45 returned to the legal owners thereof, the receiver shall proceed
46 to liquidate the assets of such utility in the manner provided
47 by law.

48 The laws generally applicable to receivership shall govern
49 receiverships created pursuant to this section.

**§24-2-8. System of accounts to be kept by public utilities; uniform
accounting system for public service districts and
municipally owned public utilities.**

1 (a) The commission may establish a system of accounts to
2 be kept by public utilities or classify public utilities and
3 establish a system of accounts for each class, and prescribe
4 the manner in which such accounts shall be kept. It may
5 also in its discretion prescribe the forms of accounts, records
6 and memoranda to be kept by such public utilities, including
7 the accounts, records and memoranda of the movement of
8 traffic as well as the receipt and expenditure of moneys, and
9 any other forms, records and memoranda which in the
10 judgment of the commission may be necessary to carry out
11 any of the provisions of this chapter. In the case of utilities
12 subject to the provisions of the act of Congress entitled "An
13 act to regulate commerce," approved February four, eighteen
14 hundred and eighty-seven, and the acts amendatory thereof
15 and supplemental thereto, the system of accounts established
16 by the commission and the forms of accounts, records and
17 memoranda prescribed by it shall not be inconsistent with
18 the systems and forms from time to time established for
19 such utilities by the interstate commerce commission. But
20 nothing herein contained shall affect the power of the com-
21 mission to prescribe forms of accounts, records and memo-
22 randa covering information in addition to that required by
23 the interstate commerce commission. The commission may,
24 after hearing had upon its own motion or upon complaint,

25 prescribe by order the accounts in which particular outlays
26 and receipts shall be entered, charged or credited.

27 (b) The commission shall, on or before the thirty-first day
28 of December, one thousand nine hundred seventy-nine, adopt
29 rules and regulations prescribing and establishing a uniform
30 system of accounts and accounting to be kept by all public
31 service districts and municipally owned public utilities, and,
32 in so doing, the commission shall confer with and seek the
33 assistance of the tax commissioner in order to coordinate
34 any such accounting systems and procedures with any such
35 procedures or systems adopted by the state tax department
36 governing the fiscal affairs of municipalities. Such rules
37 and regulations shall establish a date by which all utilities are
38 to conform with any such accounting procedures and systems
39 adopted by the commission. Any such rules and regulations
40 prescribing a system or procedure of accounting to be kept by
41 such public utilities may classify such utilities and establish
42 a system or procedure of accounts for each class and prescribe
43 the manner of keeping such accounts. The commission may
44 also ascertain, determine and prescribe what are proper and
45 adequate charges for depreciation of the several classes of
46 property for each utility and may prescribe such changes as
47 it may deem appropriate in charges made for depreciation
48 as it finds necessary.

§24-2-11. Requirements for certificate of public convenience and necessity.

1 No public utility, person or corporation, shall begin the
2 construction of any plant, equipment, property or facility for
3 furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor
5 obtain any franchise, license or permit from any municipality
6 or other governmental agency, except ordinary extensions of
7 existing systems in the usual course of business, unless and
8 until it shall obtain from the public service commission a
9 certificate of public convenience and necessity requiring such
10 construction, franchise, license or permit. Upon the filing
11 of any application for such certificate, and after hearing, the
12 commission may, in its discretion, issue or refuse to issue, or
13 issue in part and refuse in part, such certificate of convenience

14 and necessity: *Provided*, That any public utility, person or
15 corporation subject to the provisions of this section shall
16 give the commission at least thirty days' notice of the filing
17 of any such application for a certificate of public convenience
18 and necessity under this section. The commission shall render
19 its final decision on any application filed after the thirtieth day
20 of June, one thousand nine hundred eighty-one, under the pro-
21 visions of this section or section eleven-a of this article within
22 two hundred seventy days of the filing of the application and
23 within ninety days after final submission of any such applica-
24 tion for decision following a hearing: *Provided*, That if the
25 projected total cost of the project is greater than fifty million
26 dollars, the commission shall render its final decision on any
27 such application filed under the provisions of this section or
28 section eleven-a of this article within four hundred days of the
29 filing of the application and within ninety days after final sub-
30 mission of any such application for decision after a hearing. If
31 such decision is not rendered within the aforementioned two
32 hundred seventy days, four hundred days or ninety days, the
33 commission shall issue a certificate of convenience and neces-
34 sity as applied for in the application. The commission shall
35 prescribe such rules and regulations as it may deem proper for
36 the enforcement of the provisions of this section; and, in
37 establishing that public convenience and necessity do exist,
38 the burden of proof shall be upon the applicant.

§24-2-13. Enforcement of federal acts.

1 In addition to all other powers and duties conferred upon
2 the public service commission herein, the commission shall be
3 charged with the duty of enforcing the provisions of the United
4 States "Federal Railroad Safety Act" and the "Uniform Motor
5 Carrier Identification Act" in this state under the federal
6 requirements contained therein requiring state enforcement of
7 such acts, insofar as the same are not repugnant to the laws
8 of this state or contrary to the rules and regulations of the
9 commission.

10 The commission shall also perform those duties expressly
11 conferred upon a state regulatory authority by the "National
12 Energy Conservation Policy Act of 1978," "Power Plant and
13 Industrial Fuel Use Act of 1978," and the "Public Utilities

14 Regulatory Policy Act of 1978," insofar as the same are not
15 repugnant to the laws of this state or contrary to the rules
16 and regulations of the commission, unless the governor, exer-
17 cising authority reserved to him in said acts, designates another
18 agency to perform such duties, in whole or in part. The term
19 "state regulatory authority" as used in this paragraph shall
20 have the same meaning as such term is defined by said federal
21 acts.

22 In addition, the commission shall carry out other federal
23 acts, including appropriate portions of the "Natural Gas Policy
24 Act of 1978," for which the governor designates it as the
25 responsible agency in this state.

§24-2-15. Automatic adjustment clauses or fuel adjustment clauses prohibited.

1 The commission shall not enforce, originate, continue, es-
2 tablish, change or otherwise authorize or permit an increase
3 in the charge or charges for electric energy over and above the
4 established and published tariff, rate, joint rate, charge, toll or
5 schedule through any automatic adjustment clause or fuel
6 adjustment clause.

**ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUB-
JECT TO REGULATIONS OF COMMISSION.**

§24-3-6. Special license fee; "public service commission fund."

§24-3-7. Permit to abandon service; certificate.

§24-3-6. Special license fee; "public service commission fund."

1 (a) All public utilities subject to the provisions of this
2 chapter shall pay a special license fee in addition to those
3 now required by law. The amount of such fees shall be fixed
4 by the public service commission and such fee shall not
5 exceed ten cents on each one hundred dollars of value and
6 shall be levied by it upon each of such public utilities accord-
7 ing to the value of its property as ascertained by the last as-
8 sessment, and shall be apportioned among such public utilities
9 upon the basis of such valuation, which fees shall be paid on
10 or before the twentieth day of January in each year. Such
11 sum, together with that provided in subsection (b) hereof, shall
12 be paid into the state treasury and kept as a special fund
13 designated "public service commission fund," to be appropriat-

14 ed as provided by law for the purpose of paying the salaries of
15 the commission, as fixed by this chapter, its expenses and
16 salaries, compensations, costs and expenses of its employees.

17 (b) All public utilities subject to the provisions of this
18 chapter shall pay a special license fee in addition to any and all
19 fees now required by law. The amount of such fees shall be
20 fixed by the public service commission and such fee shall not
21 exceed forty cents on each one hundred dollars of total gross
22 revenue and shall be levied by it upon each of such public
23 utilities, in the proportion which the total gross revenue de-
24 rived from intrastate business done by each of such public
25 utilities in the calendar year next preceding bears to the total
26 gross revenue derived from intrastate business done in such
27 year by all public utilities subject to regulation by the public
28 service commission, in addition to such fees as may be fixed
29 by the public service commission under the provisions of sub-
30 section (a) hereof and which fees shall be paid on or before
31 the first day of July in each year. Such sum shall be paid into
32 the state treasury and be kept, appropriated and used as pro-
33 vided in subsection (a) hereof.

34 (c) Any balance remaining in said fund at the end of any
35 fiscal year shall not revert to the treasury but shall remain in
36 said fund and may be appropriated and used as provided in
37 subsection (a) hereof in the ensuing fiscal years.

§24-3-7. Permit to abandon service; certificate.

1 No railroad or other public utility shall abandon all or any
2 portion of its service to the public or the operation of any of
3 its lines which would affect the service it is rendering the
4 public unless and until there shall first have been filed with
5 the public service commission of this state an application for
6 a permit to abandon service and obtained from the commis-
7 sion an order stating that the present and future public con-
8 venience and necessity permits such abandonment.

ARTICLE 5. REVIEW OF COMMISSION'S ACTION.

§24-5-1. Review of final orders of commission.

1 Any party feeling aggrieved by the entry of a final order by
2 the commission, affecting him or it, may present a petition in

3 writing to the supreme court of appeals, or to a judge thereof
4 in vacation, within thirty days after the entry of such order,
5 praying for the suspension of such final order. The applicant
6 shall deliver a copy of such petition to the secretary of the
7 commission on or before the date the same is presented to the
8 court or the judge, and it shall be the duty of the secretary
9 promptly to file with the clerk of said court all papers, docu-
10 ments, evidence and other records constituting the complete
11 record in the case, or certified copies thereof, as were before
12 the commission at the time of the entry of the order from
13 which the appeal is taken. The court or judge shall fix a time
14 for the hearing on the application, but such hearing, unless by
15 agreement of the parties, shall not be held sooner than five
16 days after its presentation; and notice of the time and place of
17 such hearing shall be forthwith delivered to the secretary of
18 the commission, so that the commission may be represented
19 at such hearing by one or more of its members or by counsel.
20 If the court or the judge after such hearing be of the opinion
21 that a suspending order should issue, the court or the judge
22 may require bond, upon such conditions and in such penalty,
23 and impose such terms and conditions upon the petitioner, as
24 are just and reasonable. The commission shall file with the
25 court before the day fixed for the final hearing a written state-
26 ment of its reasons for the entry of such order, and after
27 arguments by counsel the court shall decide the matter in con-
28 troversy as may seem to be just and right.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

Article

2. Common Carriers by Motor Vehicles.

6. Duties and Privileges of Motor Carriers Subject to Regulation of the Commission.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-2a. Regulation of business of towing, hauling or carrying wrecked or disabled vehicles.

§24A-2-5. Certificate of convenience and necessity.

§24A-2-2a. Regulation of business of towing, hauling or carrying wrecked or disabled vehicles.

1 (a) On and after July one, one thousand nine hundred

2 eighty-two, common carriers by motor vehicles engaged in the
3 business of towing, hauling or carrying wrecked or disabled
4 vehicles shall, notwithstanding any other provision of the
5 laws of the state of West Virginia to the contrary, be regulated
6 by the provisions of this section and this section shall not be
7 applicable to said carriers until such date.

8 (b) No common carrier by motor vehicle engaged in the
9 business of towing, hauling or carrying wrecked or disabled
10 vehicles and mobile homes shall be required to obtain a com-
11 mon carrier certificate or other certificate of authority from
12 the commission prior to engaging in such business, however,
13 such carrier shall not engage in such business unless and until
14 such carrier shall have registered as a carrier with the com-
15 mission in accordance with the provisions of this section.

16 (c) A person may not act as a common carrier by motor
17 vehicle by engaging in the business of towing, hauling or
18 carrying wrecked or disabled motor vehicles for hire unless
19 that person has registered as a carrier with the public service
20 commission as provided in this section; nor, may a person
21 continue to act as a carrier by engaging in the business of
22 towing, hauling or carrying wrecked or disabled motor vehicles
23 for hire if his registration is revoked or suspended by the com-
24 mission. A person registered as a carrier under the provisions
25 of this section may not charge, demand, collect or receive a
26 greater remuneration for the towing, hauling or carrying of any
27 wrecked or disabled motor vehicle than the rates, fares and
28 charges established by the provisions of this section.

29 The commission shall register all carriers as may make
30 application for registration as a common carrier by motor
31 vehicle for the purpose of engaging in the business of towing,
32 hauling or carrying wrecked or disabled motor vehicles for hire
33 upon satisfactory evidence to the commission that the carrier
34 has complied with all applicable requirements of this chapter
35 and all applicable rules and regulations of the commission.
36 The commission shall by general order, applicable to all car-
37 riers registered under this section, fix, alter and determine
38 just, fair, reasonable and sufficient maximum statewide or
39 regional schedules of rates, fares and charges, and it shall

40 establish reasonable classifications of carriers for which the
41 schedules are applicable, but before the rates, fares and charges
42 are fixed, altered or determined, the commission shall hold
43 hearings in order to give all interested parties an opportunity
44 to be heard, and it shall give reasonable notice of the hearings
45 in the manner as the commission shall by rule prescribe.
46 Carriers registered under the provisions of this section are
47 subject to the regulatory powers of the commission as provided
48 in section three of this article.

49 Upon the complaint of any aggrieved party, the commission
50 may suspend or revoke the registration of any person registered
51 with the commission under the provisions of this section for
52 the violation of any rule or regulation established by the
53 commission and applicable to that person or for the violation
54 of any provision of this article applicable to persons registered
55 under the provisions of this section: *Provided*, That for the
56 first violation, suspension of registration shall be for a period
57 of not more than thirty days; and, for a second violation the
58 commission may revoke the registration for a period of one
59 year; and, for a third violation the commission may revoke the
60 registration permanently. But before any suspension or revo-
61 cation is effected, the person registered under this section shall
62 first be given reasonable notice of the charges against him
63 and shall be granted an opportunity to be heard by the com-
64 mission or its designee in accordance with the rules and regula-
65 tions for hearings as may be by rule established by the
66 commission.

§24A-2-5. Certificate of convenience and necessity.

1 It shall be unlawful for any common carrier by motor
2 vehicle to operate within this state without first having ob-
3 tained from the commission a certificate of convenience
4 and necessity. Upon the filing of an application for such
5 certificate, the commission shall set a time and place for a
6 hearing on the application: *Provided*, That the commission
7 may, after giving proper notice and if no protest is received,
8 waive formal hearing on the application. Notice shall be
9 by publication which shall state that a formal hearing may
10 be waived in the absence of a protest to such application.

11 The notice shall be published as a Class I legal advertise-
12 ment in compliance with the provisions of article three,
13 chapter fifty-nine of this code, and the publication area for
14 such publication shall be the proposed area of operation.
15 The notice shall be published at least ten days prior to
16 the date of the hearing. After the hearing or waiver by
17 the commission of the hearing, if the commission finds
18 from the evidence that the public convenience and neces-
19 sity require the proposed service or any part thereof, it
20 shall issue the certificate as prayed for, or issue it for the
21 partial exercise only of the privilege sought, and may attach
22 to the exercise of the right granted by such certificate such
23 terms and conditions as in its judgment the public convenience
24 and necessity may require, and if the commission shall be of
25 the opinion that the service rendered by any common carrier
26 holding a certificate of convenience and necessity over any
27 route or routes in this state is in any respect inadequate or
28 insufficient to meet the public needs, such certificate holder
29 shall be given reasonable time and opportunity to remedy such
30 inadequacy or insufficiency before any certificate shall be
31 granted to an applicant proposing to operate over such route
32 or routes as a common carrier. Before granting a certificate to
33 a common carrier by motor vehicle the commission shall take
34 into consideration existing transportation facilities in the
35 territory for which a certificate is sought, and in case it finds
36 from the evidence that the service furnished by existing trans-
37 portation facilities is reasonably efficient and adequate, the
38 commission shall not grant such certificate.

**ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUB-
JECT TO REGULATION OF THE COMMISSION.**

**§24A-6-6. Special annual assessment against motor carriers for
expenses of administering chapter; "public service
commission motor carrier fund."**

1 In addition to the license fees, registration fees, or any
2 other taxes required by law to be collected from motor
3 carriers subject to this chapter, each such motor carrier
4 shall be subject to, and shall pay to the public service

5 commission, a special annual assessment for the purpose of
 6 paying the salaries, compensation, costs and expenses of
 7 administering and enforcing this chapter. All proceeds or
 8 funds derived from such assessment shall be paid into the
 9 state treasury and credited to a special fund designated
 10 public service commission motor carrier fund, to be appro-
 11 priated as provided by law for the purposes herein stated.
 12 Each member of the commission shall receive a salary in
 13 the amount set forth in section three, article one, chapter
 14 twenty-four of this code as compensation for the administra-
 15 tion of this chapter in addition to all other salary or com-
 16 pensation otherwise provided by law, to be paid in monthly
 17 installments from said fund. The special assessment against
 18 each motor carrier shall be apportioned upon the number
 19 and capacity of motor vehicles used by said carrier, computed
 20 as hereinafter provided.

21 (a) For each uniform identification card \$ 3.00

22 (b) Upon each power unit of such carriers of
 23 property, in accordance with its capacity as rated by
 24 its manufacturer, in addition to amount of subdivision

25 (a):

26	of one ton or less capacity	\$ 9.00
27	of over one to one and one-half tons capacity	13.50
28	of over one and one-half tons to two tons capacity	18.00
29	of over two tons to three tons capacity	22.50
30	of over three tons to four tons capacity	27.00
31	of over four tons to five tons capacity	31.50
32	of over five tons to six tons capacity	36.00
33	of over six tons to seven tons capacity	40.50
34	of over seven tons to eight tons capacity	45.00
35	of over eight tons to nine tons capacity	49.50
36	of over nine tons to ten tons capacity	54.00
37	of over ten tons capacity, \$54.00 plus \$4.50 for each	
38	additional ton of capacity in excess of ten tons.	

39 (c) Upon each trailer and semitrailer of such carriers of
 40 property, in accordance with its capacity as rated by its

41 manufacturer, in an amount of two thirds of the amount
 42 provided for vehicles of its capacity in subdivision (b) of
 43 this section.

44 (d) Upon each power unit of such carriers of passengers,
 45 in accordance with the seating capacity thereof, in addition
 46 to amount in subdivision (a):

47	of ten passengers or less	\$13.50
48	of eleven to twenty passengers, inclusive	22.50
49	of twenty-one to thirty passengers, inclusive.....	31.50
50	of thirty-one to forty passengers, inclusive	45.00
51	of over forty passengers	54.00

52 (e) The annual assessment of each motor carrier shall
 53 be paid on or before the first day of July of each year.
 54 Additional assessments shall be collected upon the placing in
 55 use of any additional motor vehicle: *Provided*, That such
 56 additional assessments shall be subject to a reduction in
 57 the amounts shown in subdivisions (b), (c) and (d) corres-
 58 ponding to the unexpired quarterly periods of the fiscal year,
 59 but shall not in any event be less than one fourth of such
 60 amount plus the sum of three dollars provided in subdivi-
 61 sion (a).

62 (f) Upon payment by any motor carrier of the assessment
 63 provided for, the public service commission shall advise the
 64 department of motor vehicles by notice in writing that such
 65 assessment has been paid, whereupon the department of motor
 66 vehicles may issue motor vehicle licenses for the vehicles
 67 described in said notice.

68 (g) Prior to the beginning of any fiscal year the public
 69 service commission, after taking into consideration any un-
 70 expended balance in the motor carrier fund, the probable
 71 receipts to be received in the ensuing fiscal year, and the
 72 probable costs of administering and enforcing this chapter
 73 for the ensuing fiscal year, may fix the assessments provided
 74 for in this section for the ensuing fiscal year in amounts
 75 which, in the commission's judgment, will produce sufficient
 76 revenue to administer and enforce this chapter for said fiscal
 77 year: *Provided*, That in no event shall such assessments
 78 exceed the amounts set up in this section.

CHAPTER 24B. GAS PIPELINE SAFETY.**Article**

4. Hearings; Burden of Proof; Enforcement.

5. Employees of Commission; Funding.

ARTICLE 4. HEARINGS; BURDEN OF PROOF; ENFORCEMENT.**§24B-4-6. Penalties.**

1 (a) Any person who violates any provision of this chapter
2 or any valid regulation or order issued thereunder, shall be
3 subject to a civil penalty to be imposed by the commission
4 of not to exceed one thousand dollars for each violation for
5 each day that the violation persists: *Provided*, That the
6 maximum civil penalty shall not exceed two hundred thousand
7 dollars for any related series of violations.

8 (b) Any civil penalty may be compromised by the com-
9 mission. In determining the amount of penalty, or the amount
10 agreed upon in compromise, the appropriateness of the pen-
11 alty to the size of the business of the person charged, the
12 gravity of the violation, and the good faith of the person
13 charged in attempting to achieve compliance, after notifica-
14 tion of the violation, shall be considered. The amount of
15 the penalty, when finally determined, or the amount agreed
16 upon in compromise, may be deducted from any sums owing
17 by the state to the person charged or may be recovered in a
18 civil action in the state courts.

19 (c) Civil penalties collected under this section shall be
20 paid into the state treasury.

ARTICLE 5. EMPLOYEES OF COMMISSION; FUNDING.

§24B-5-1. Employees.

§24B-5-2. Compensation to commissioners.

§24B-5-3. Funding; property and revenue license fees.

§24B-5-1. Employees.

1 The commission shall appoint such employees as may be
2 necessary to carry out the provisions of this chapter, and shall
3 fix their respective salaries or compensation. The commission

4 may designate such employees as it deems necessary to take
5 evidence at any hearing held or required by the provisions
6 of this chapter, which employees are hereby empowered to
7 administer oaths in all parts of this state so far as the exercise
8 of such power is properly incidental to the performance of
9 their duties in connection with the provisions of this chapter.

§24B-5-2. Compensation to commissioners.

1 Each member of the commission shall receive a salary in
2 the amount set forth in section three, article one, chapter
3 twenty-four of this code as compensation for the administra-
4 tion of this chapter in addition to all other salary or compen-
5 sation otherwise provided for by law, to be paid in monthly
6 installments from the public service commission gas pipeline
7 safety fund.

§24B-5-3. Funding; property and revenue license fees.

1 (a) Every pipeline company shall pay a special license fee
2 in addition to those now required by law. The amount of
3 such fees shall be fixed by the public service commission
4 and levied by it upon each of such pipeline companies accord-
5 ing to the number of three inch equivalent pipeline miles
6 included in its pipeline facilities, and shall be apportioned
7 among such pipeline companies upon the basis of the pipe-
8 line companies' reports submitted to the commission in such
9 form as the commission may prescribe, so as to produce a
10 revenue of not more than one hundred fifty thousand dollars
11 per annum, which fees shall be paid on or before the first day
12 of July in each year.

13 (b) Such sums collected under subsection (a) of this section
14 shall be paid into the state treasury and kept as a special fund,
15 designated "public service commission gas pipeline safety
16 fund," to be appropriated as provided by law for the purpose
17 of paying the salaries of the commission, as fixed by this
18 chapter, its expenses and salaries, compensation, costs and
19 expenses of its employees. Any balance in said fund at the
20 end of any fiscal year shall not revert to the treasury, but
21 shall remain in said fund and may be appropriated as pro-
22 vided in this subsection.

CHAPTER 99

(S. B. 389—By Mr. Brotherton, Mr. President, Mr. Harman and Mr. Susman)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to legislative findings that a statewide emergency telephone system is important to all citizens; defining certain terms; requiring the public service commission to adopt an emergency telephone system plan; establishment of emergency systems by state and local agencies; access to certain police, fire, emergency services, uniform statewide emergency number, and changeover of telephones by certain utilities required; requiring that systems be accessible to deaf persons; requiring certain utilities and public agencies to pay certain costs; and requiring all coin-operated telephones to permit emergency calls without charge by the first day of January, one thousand nine hundred eighty-seven.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-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 six, to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-1. Legislative findings.

§24-6-2. Definitions.

§24-6-3. Adoption of emergency telephone system plan.

§24-6-4. Creation of emergency telephone systems.

§24-6-1. Legislative findings.

1 The Legislature hereby finds and declares that it is in
2 the public interest to shorten the time required for a
3 citizen to request and receive emergency aid. There are
4 hundreds of different emergency phone numbers through-
5 out the state. Present telephone exchange boundaries
6 and central office service areas do not necessarily corres-

7 pond to public safety and political boundaries. Provi-
8 sion of a single, primary emergency number through
9 which emergency services can be quickly and efficiently
10 obtained will provide a significant contribution to law
11 enforcement and other public service efforts. This simpli-
12 fied means of procuring emergency services will result
13 in the saving of life, a reduction in the destruction of
14 property, quicker apprehension of criminals, and ulti-
15 mately the saving of money. The Legislature further finds
16 and declares that the establishment of a uniform, state-
17 wide emergency number is a matter of statewide concern
18 and interest to all inhabitants and citizens of this state.
19 It is the purpose of this article to establish a primary
20 emergency telephone number for use in this state and
21 to encourage units of local government and combinations
22 of units of local government to develop and improve
23 emergency communication procedures and facilities in
24 a manner that will allow a quick response to any person
25 calling the primary emergency telephone number seek-
26 ing police, fire, medical, rescue and other emergency
27 services.

§24-6-2. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:

3 (1) "Public agency" means the state, and any municipi-
4 tality, county, public district or public authority which
5 provides or has authority to provide fire-fighting, police,
6 ambulance, medical, rescue or other emergency services.

7 (2) "Emergency services organization" means the
8 organization established under article five, chapter fifteen
9 of this code.

10 (3) "Public safety unit" means a functional division
11 of a public agency which provides fire-fighting, police,
12 medical, rescue or other emergency services.

13 (4) "Emergency telephone system" means a telephone
14 system which through normal telephone service facilities
15 automatically connects a person dialing the primary
16 emergency telephone number to an established public
17 agency answering point.

§24-6-3. Adoption of emergency telephone system plan.

1 (a) The public service commission shall, by the first
2 day of January, one thousand nine hundred eighty, de-
3 velop and adopt a comprehensive plan establishing the
4 technical and operational standards to be followed in
5 establishing and maintaining emergency telephone sys-
6 tems.

7 (b) In developing the comprehensive plan, the public
8 service commission shall consult with those public
9 utilities engaged in the provision of telephone service,
10 and with the various public agencies and public safety
11 units, including, but not limited to, emergency services
12 organizations.

13 (c) The public service commission shall annually
14 review with each operating telephone utility their con-
15 struction and switching replacements projections.
16 During this review, the public service commission shall
17 ensure that all new switching facilities will accommodate
18 the emergency telephone system.

§24-6-4. Creation of emergency telephone systems.

1 (a) Upon the adoption by the public service commis-
2 sion of the comprehensive plan, a public agency may
3 establish, consistent with the comprehensive plan, an
4 emergency telephone system within its respective juris-
5 diction. Nothing herein contained, however, shall be
6 construed to prohibit or discourage in any way the
7 establishment of multijurisdiction or regional systems,
8 and any system established pursuant to this article may
9 include the territory of more than one public agency,
10 or may include only a portion of the territory of a
11 public agency. To the extent feasible, these systems
12 shall be centralized.

13 (b) Every system shall provide access to emergency
14 services organizations, police, fire-fighting, and emergency
15 medical and ambulance services, and may provide access
16 to other emergency services. The system may also pro-
17 vide access to private ambulance services. The system
18 shall provide the necessary mechanical equipment at the

19 established public agency answering point to allow deaf
20 persons access to the system. In those areas in which a
21 public safety unit of the state provides emergency ser-
22 vices, the system shall provide access to the public safety
23 unit.

24 (c) The primary emergency telephone number to the
25 extent possible, shall be uniform throughout the state.

26 (d) The utility in the normal course of replacing or
27 making major modifications to its switching equipment
28 shall include the capability of providing for the emer-
29 gency telephone system and shall bear all costs related
30 thereto. All charges for other services and facilities
31 provided by the utility, including the provision of dis-
32 tribution facilities and station equipment, shall be paid
33 for by the public agency or public safety unit in ac-
34 cordance with the applicable tariff rates then in effect
35 for such services and facilities. Other costs pursuant to
36 the emergency telephone system shall be allocated as
37 determined by the public service commission.

38 (e) All coin-operated telephones within the state
39 shall, by the first day of January, one thousand nine
40 hundred eighty-seven, be of a design that will permit a
41 caller to initiate, without first having to insert a coin
42 (dial tone first or post pay systems), local calls to the
43 long distance and directory assistance operators, calls to
44 the emergency telephone number answering point, if
45 one has been established in his local calling area, and
46 to other numbers for services as the utility may from
47 time to time make available to the public.

CHAPTER 100

(Com. Sub. for S. B. 72—By Mr. Steptoe)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter
forty-seven 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 eleven, relating to removing from certain parties the right to the defense of usury in any civil action; exempting certain debts that are incurred primarily for a business purpose from the application of the usury laws; and defining "business."

Be it enacted by the Legislature of West Virginia:

That section ten, article six, chapter forty-seven 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 eleven, all to read as follows:

ARTICLE 6. MONEY AND INTEREST.

§47-6-10. Corporations, partnerships, and limited partnerships not entitled to defense of usury.

§47-6-11. Certain business debts exempt from usury laws.

§47-6-10. Corporations, partnerships, and limited partnerships not entitled to defense of usury.

1 No corporation, partnership, or limited partnership may
2 interpose the defense of usury in any civil action, nor
3 may any bond, note, debt, or contract of a corporation,
4 partnership, or limited partnership be set aside, impaired,
5 or adjudged invalid by reason of anything contained in
6 the laws prohibiting usury.

§47-6-11. Certain business debts exempt from usury laws.

1 No law limiting interest rates or providing for for-
2 feiture, penalty, or other loss or liability because of the
3 rate of interest charged may be applied:

4 (1) To any debt that is incurred by a loan, installment
5 sale, or other similar transaction, and is incurred primar-
6 ily for a business purpose; or

7 (2) To any addition to or refinancing in whole or in
8 part of a debt meeting the requirements of subdivision
9 (1) of this section, providing such addition or refinancing
10 is also primarily for a business purpose: *Provided, That*
11 if the debt described in subdivision (1) of this section is
12 incurred by a natural person, the provisions of this sec-

13 tion shall not apply unless such debt is in a principal
14 amount of twenty thousand dollars or more.

15 For the purpose of determining the applicability of
16 this section, the term "business" means and includes any
17 activity that is engaged in primarily for the purpose of
18 generating "gross income," as that term is defined in
19 section one, article thirteen, chapter eleven of this code:
20 *Provided*, That "business" does not mean or include
21 farming or any other agricultural activity engaged in by
22 a producer of agricultural commodities, livestock, or
23 other farm products.

CHAPTER 101

(Com. Sub. for H. B. 1394—By Mrs. Lane)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain acts prohibited by manufacturers and distributors and acceptance of successor dealers.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 17. REGULATION OF BUSINESS PRACTICES BETWEEN
MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS.**

§47-17-5. Certain acts prohibited.

1 Notwithstanding the terms, provisions or conditions of any
2 franchise, no manufacturer or distributor shall:

3 (a) Terminate, cancel or fail to renew a franchise without
4 just cause, except with the prior consent of the dealer. Not-
5 withstanding the provisions of any franchise setting forth prima
6 facie grounds or just cause for terminating, cancelling or fail-

7 ing to renew a franchise, such determination of just cause shall
8 be made by a court of law after due consideration of, but
9 without being bound by the prima facie grounds or definition of
10 just cause contained in such franchise. The burden of proof
11 of just cause shall be on the manufacturer or distributor.

12 (b) Refuse without just cause to accept as successor dealer
13 the widow, son or other member of the family of a deceased
14 dealer, who succeeds to the deceased person's place in the
15 dealership business. However, no member of the family may
16 succeed to a franchise unless the manufacturer has been given
17 written notice of the identity, financial ability and qualifications
18 of such member of the family and in no event shall the succes-
19 sor be refused acceptance until after two months' notice in
20 writing is first given by the manufacturer or distributor to
21 the successor dealer.

22 (c) Refuse without just cause to accept as a successor dealer
23 a purchaser to whom the dealer has agreed to sell the dealer-
24 ship business. However, no successor dealer may succeed to a
25 franchise unless the manufacturer or distributor has been given
26 written notice of the identity, financial ability and qualifica-
27 tions of such successor dealer. In the event the manufacturer or
28 distributor refuses to accept as a successor dealer a purchaser
29 to whom the dealer has agreed to sell the dealership business,
30 the manufacturer or distributor is required to inform the pur-
31 chaser in writing within two months of the date of the written
32 notice of the identity, financial ability and qualifications of
33 such purchaser, valid reasons for nonacceptance.

34 (d) Sell, lease or rent goods, motor vehicles, or render any
35 service normally performed and required of dealers under the
36 franchise agreement with the manufacturer in unfair competi-
37 tion with such dealer, except that this subdivision does not
38 apply to a sale, lease or rental to, or service performed for, an
39 agency of federal, state or local government.

40 (e) Require any dealer to participate in or contribute to
41 any local or national advertising fund, or participate in any
42 contests, "givcaways" or other sales devices, without the deal-
43 er's consent.

44 (f) Withhold or delay delivery of motor vehicles out of the
45 ordinary course of business.

46 (g) Discriminate against any dealer in the allocation of, or
47 through withholding from delivery of, certain models of motor
48 vehicles ordered by the dealer out of the ordinary course of
49 business.

50 (h) Amend unilaterally a dealer's allotment of motor ve-
51 hicles or quota in sales contests without reasonable cause.

52 (i) Coerce, attempt to coerce a dealer, or act other than
53 honestly in accordance with reasonable standards for fair
54 dealing, with respect to the dealer's right to sell, assign, trans-
55 fer or otherwise dispose of his business, in all or in part:
56 *Provided*, That the dealer shall have no right to sell, assign or
57 transfer the franchise without the manufacturer's consent.

58 (j) Coerce or attempt to coerce any dealer by any of the
59 following methods: (1) Threaten to refuse or fail to renew or
60 extend a lease of premises controlled by a manufacturer, (2)
61 threaten to award an additional franchise or agreement to
62 another person for the sale of the same product as a dealer
63 in that dealer's area of influence or responsibility, (3) threaten
64 to withhold or delay the delivery of motor vehicles, parts or
65 other saleable goods, (4) threaten to terminate, cancel or fail
66 to renew a dealer's franchise or agreement, or (5) any other
67 method of coercion as follows: (i) Expand a dealer's facilities,
68 increase a dealer's sales personnel, purchase more parts or
69 accept programs for sales and the operation of a dealer's
70 business, (ii) accept delivery of any motor vehicle, parts,
71 accessories or other similar commodities not ordered by a
72 dealer, (iii) consent to participate and participate in or contri-
73 bute to any local or national advertising fund, or participate in
74 any contests, "giveaways" or other sales devices, (iv) compel a
75 dealer to yield to demands of a manufacturer or distributor for
76 increased sales, expansion of facilities or improvement of
77 operations inconsistent with good business practices.

78 (k) Require any dealer to sell or use exclusively any
79 products, other than motor vehicles, that such manufacturer
80 or distributor offers for sale.

81 Nothing in this section shall prohibit or prevent a manufac-
82 turer or distributor from performing, or requiring the perfor-
83 mance by a dealer of any of the provisions of the franchise

84 where such performance or requirement is fair, reasonable and
85 equitable under all the surrounding circumstances, and con-
86 sistent with good business practices on the part of both dealer
87 and manufacturer or distributor.

CHAPTER 102

(Com. Sub. for S. B. 125—By Mr. Steptoe)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-c, article five, chapter twenty-one-a; to amend and reenact section thirty-eight, article six, chapter thirty-one; to amend and reenact section four hundred fourteen, article four, chapter thirty-two; to amend and reenact section thirteen, article four, chapter thirty-three; to amend and reenact section nine, article one-a, chapter thirty-eight; to amend and reenact section one hundred thirty-seven, article two, chapter forty-six-a; to amend and reenact section thirty-one, article three, chapter fifty-six; and to amend and reenact section thirty-three, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to service of process on certain non-residents; changing certain references to "auditor" to "secretary of state"; and providing that where service of notices or process is made on nonresidents, such service may be made by registered or certified mail.

Be it enacted by the Legislature of West Virginia:

That section seventeen-c, article five, chapter twenty-one-a; section thirty-eight, article six, chapter thirty-one; section four hundred fourteen, article four, chapter thirty-two; section thirteen, article four, chapter thirty-three; section nine, article one-a, chapter thirty-eight; section one hundred thirty-seven, article two, chapter forty-six-a; section thirty-one, article three, chapter fifty-six; and section thirty-three, article three, chapter fifty-six, all of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, be amended and reenacted to read as follows:

Chapter

21A. Unemployment Compensation.

31. Corporations.

32. Uniform Securities Act.

33. Insurance.

38. Liens.

46A. West Virginia Consumer Credit and Protection Act.

56. Pleading and Practice.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-17c. Service of process on nonresident employer.

1 If an employer is not a resident of West Virginia, was
2 a resident but has left the state of West Virginia, or is a
3 corporation not authorized to do business in this state and
4 for which employer services are performed in insured
5 work within the state of West Virginia and liability for
6 payment of unemployment compensation contributions
7 is due and payable to this state under the provisions of
8 the West Virginia unemployment compensation law, such
9 employer shall be deemed to appoint the secretary of
10 state of West Virginia, or his successor in office, to be
11 the employer's true and lawful attorney upon whom may
12 be served all lawful process in any action or any pro-
13 ceeding for all purposes under this chapter and when
14 served as hereinafter provided such service shall have the
15 same force, effect and validity as if said nonresident em-
16 ployer were personally served with summons and com-
17 plaint in this state.

18 Service shall be made by leaving the original and two
19 copies of both the summons and complaint, and a fee of
20 two dollars, with the secretary of state, or in his office,
21 and said service shall be sufficient upon said nonresident.
22 In the event any such summons and complaint is so
23 served on the secretary of state he shall immediately
24 cause one of the copies of the summons and complaint to
25 be sent by registered or certified mail, return receipt

26 requested, to the employer at the latter's last known or
27 reasonably ascertainable address. The employer's return
28 receipt or, if such registered or certified mail is returned
29 to the secretary of state refused by the addressee or for
30 any other reason is undelivered, such mail showing there-
31 on the stamp of the post-office department that delivery
32 has been refused, or other reason for nondelivery, shall
33 be appended to the original summons and complaint, and
34 filed by the secretary of state in the clerk's office of the
35 court from which said process issued.

CHAPTER 31. CORPORATIONS.

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.

§31-6-38. License tax on domestic and foreign associations.

1 All domestic and foreign building and loan associations
2 shall pay annually to the secretary of state a state license
3 tax for the privilege of doing business in this state in an
4 amount based upon the amount of money loaned by such
5 associations in this state instead of upon the proportion
6 of capital stock represented by the property owned and
7 used in this state, and in computing such tax the same
8 rate shall be used for foreign associations as is used for
9 domestic associations: *Provided*, That the amount of
10 money loaned by such associations shall be taken to be
11 the amount shown upon the face of the document evi-
12 dencing the loan without deduction of credits therefrom.

CHAPTER 32. UNIFORM SECURITIES ACT.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-414. Scope of the chapter and service of process.

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell
3 is made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons who
6 buy or offer to buy when (1) an offer to buy is made in
7 this state, or (2) an offer to sell is made and accepted in
8 this state.

9 (c) For the purpose of this section, an offer to sell
10 or to buy is made in this state, whether or not either
11 party is then present in this state, when the offer (1)
12 originates from this state or (2) is directed by the offeror
13 to this state and received at the place to which it is di-
14 rected (or at any post office in this state in the case of a
15 mailed offer).

16 (d) For the purpose of this section, an offer to buy
17 or to sell is accepted in this state when acceptance (1) is
18 communicated to the offeror in this state and (2) has not
19 previously been communicated to the offeror, orally or in
20 writing, outside this state; and acceptance is communi-
21 cated to the offeror in this state, whether or not either
22 party is then present in this state, when the offeree di-
23 rects it to the offeror in this state reasonably believing
24 the offeror to be in this state and it is received at the
25 place to which it is directed (or at any post office in this
26 state in the case of a mailed acceptance).

27 (e) An offer to sell or to buy is not made in this
28 state when (1) the publisher circulates or there is circu-
29 lated on his behalf in this state any bona fide newspaper
30 or other publication of general, regular and paid circula-
31 tion which is not published in this state, or which is
32 published in this state but has had more than two thirds
33 of its circulation outside this state during the past twelve
34 months, or (2) a radio or television program originating
35 outside this state is received in this state.

36 (f) Sections 102 and 201(c), as well as section 405 so
37 far as investment advisors are concerned, apply when any
38 act instrumental in effecting prohibited conduct is done in
39 this state, whether or not either party is then present in
40 this state.

41 (g) Every applicant for registration under this chapter
42 and every issuer which proposes to offer a security in this
43 state through any person acting on an agency basis in the
44 common-law sense shall file with the commissioner, in
45 such form as he by rule prescribes, an irrevocable consent
46 appointing the commissioner or his successor in office to
47 be his attorney to receive service of any lawful process in

48 any noncriminal suit, action or proceeding against him or
49 his successor, executor or administrator which arises un-
50 der this chapter or any rule or order hereunder after the
51 consent has been filed, with the same force and validity
52 as if served personally on the person filing the consent. A
53 person who has filed such a consent in connection with a
54 previous registration need not file another. Service may
55 be made by leaving a copy of the process in the office of
56 the commissioner, but it is not effective unless (1) the
57 plaintiff, who may be the commissioner in a suit, action or
58 proceeding instituted by him, forthwith sends notice of the
59 service and a copy of the process by registered or certified
60 mail to the defendant or respondent at his last address on
61 file with the commissioner, and (2) the plaintiff's affidavit
62 of compliance with this subsection is filed in the case on
63 or before the return day of the process, if any, or within
64 such further time as the court allows.

65 (h) When any person, including any nonresident of
66 this state, engages in conduct prohibited or made action-
67 able by this chapter or any rule or order hereunder, and
68 he has not filed a consent to service of process under sub-
69 section (g) and personal jurisdiction over him cannot
70 otherwise be obtained in this state, that conduct shall be
71 considered equivalent to his appointment of the com-
72 missioner or his successor in office to be his attorney to
73 receive service of any lawful process in any noncriminal
74 suit, action or proceeding against him or his successor,
75 executor or administrator which grows out of that con-
76 duct and which is brought under this chapter or any rule
77 or order hereunder, with the same force and validity
78 as if served on him personally. Service may be made by
79 leaving a copy of the process in the office of the commis-
80 sioner, and it is not effective unless (1) the plaintiff, who
81 may be the commissioner in a suit, action or proceeding
82 instituted by him, forthwith sends notice of the service
83 and a copy of the process by registered or certified mail
84 to the defendant or respondent at his last known address
85 or takes other steps which are reasonably calculated to
86 give actual notice, and (2) the plaintiff's affidavit of com-
87 pliance with this subsection is filed in the case on or be-

88 fore the return day of the process, if any, or within such
89 further time as the court allows.

90 (i) When process is served under this section, the
91 court, or the commissioner in a proceeding before him,
92 shall order such continuance as may be necessary to
93 afford the defendant or respondent reasonable opportu-
94 nity to defend.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-13. Service of process on unlicensed insurers.

1 (a) The purpose of this section is to subject certain
2 insurers to the jurisdiction of the courts of this state in
3 suits by or on behalf of insureds or beneficiaries under
4 certain insurance contracts and to subject said insurers
5 to the jurisdiction of the courts of this state in suits by
6 or on behalf of the insurance commissioner of West Vir-
7 ginia. The Legislature declares that it is a subject of
8 concern that certain insurers, while not licensed to trans-
9 act insurance in this state, are soliciting the sale of in-
10 surance and selling insurance to residents of this state,
11 thus presenting the insurance commissioner with the
12 problem of resorting to courts of foreign jurisdictions for
13 the purpose of enforcing the insurance laws of this state
14 for the protection of our citizens. The Legislature de-
15 clares that it is also a subject of concern that many
16 residents of this state hold policies of insurance issued or
17 delivered in this state by insurers while not licensed to
18 transact insurance in this state, thus presenting to such
19 residents the often insuperable obstacle of resorting to
20 distant fora for the purpose of asserting legal rights
21 under such policies. In furtherance of such state interest,
22 the Legislature herein provides a method of substituted
23 service of process upon such insurers and declares that
24 in so doing it exercises its powers to protect its residents
25 and to define, for the purpose of this section, what con-
26 stitutes transacting insurance in this state, and also
27 exercises powers and privileges available to the state by
28 virtue of public law number fifteen, seventy-ninth Con-

29 gress of the United States, chapter twenty, first session,
30 Senate number three hundred forty, as amended, which
31 declares that the business of insurance and every person
32 engaged therein shall be subject to the laws of the several
33 states.

34 (b) (1) Any of the following acts in this state, effected
35 by mail or otherwise, by an unlicensed foreign or alien
36 insurer: (1) The issuance or delivery of contracts of
37 insurance to residents of this state or to corporations
38 authorized to do business therein, (2) the solicitation of
39 applications for such contracts, (3) the collection of
40 premiums, membership fees, assessments or other con-
41 siderations for such contracts, or (4) any other transac-
42 tion of business, is equivalent to and shall constitute
43 an appointment by such insurer of the secretary of state
44 and his successor in office, to be its true and lawful
45 attorney, upon whom may be served all lawful process
46 in any action, suit, or proceeding instituted by or on
47 behalf of an insured or beneficiary arising out of any such
48 contract of insurance, and in any action, suit, or pro-
49 ceeding which may be instituted by the insurance com-
50 missioner in the name of any such insured or beneficiary
51 or in the name of the state of West Virginia, and any
52 such act shall be signification of its agreement that such
53 service of process is of the same legal force and validity
54 as personal service of process in this state upon such
55 insurer.

56 (2) Such service of process upon any such insurer in
57 any such action or proceeding in any court of competent
58 jurisdiction of this state, may be made by serving the
59 secretary of state or his chief clerk with two copies
60 thereof and the payment to him of a fee of two dollars.
61 The secretary of state shall forward a copy of such
62 process by registered or certified mail to the defendant
63 at its last known principal place of business, and shall
64 keep a record of all process so served upon him. Such
65 service of process is sufficient, provided notice of such
66 service and a copy of the process are sent within ten
67 days thereafter by or on behalf of the plaintiff to the

68 defendant at its last known principal place of business
69 by registered or certified mail with return receipt re-
70 quested. The plaintiff shall file with the clerk of the
71 court in which the action is pending, or with the judge
72 or justice of such court, in case there be no clerk, an
73 affidavit of compliance herewith, a copy of the process,
74 and either a return receipt purporting to be signed by
75 the defendant or a person qualified to receive its regis-
76 tered or certified mail in accordance with the rules and
77 customs of the post-office department; or, if acceptance
78 was refused by the defendant or its agent, the original
79 envelope bearing a notation by the postal authorities
80 that receipt was refused. Service of process so made shall
81 be deemed to have been made within the territorial
82 jurisdiction of any court in this state.

83 (3) Service of process in any such action, suit or
84 proceeding shall in addition to the manner provided in
85 subdivision (2) of this subsection (b) be valid if served
86 upon any person within this state who, in this state on
87 behalf of such insurer, is

88 A. Soliciting insurance, or

89 B. Making, issuing or delivering any contract of
90 insurance, or

91 C. Collecting or receiving any premium, membership
92 fee, assessment or other consideration for insurance; pro-
93 vided notice of such service and a copy of such process
94 are sent within ten days thereafter, by or on behalf of
95 the plaintiff to the defendant at the last known principal
96 place of business of the defendant, by registered or
97 certified mail with return receipt requested. The plaintiff
98 shall file with the clerk of the court in which the action
99 is pending, or with the judge or justice of such court in
100 case there be no clerk, an affidavit of compliance here-
101 with, a copy of the process, and either a return receipt
102 purporting to be signed by the defendant or a person
103 qualified to receive its registered or certified mail in
104 accordance with the rules and customs of the post-office
105 department; or, if acceptance was refused by the de-

106 fendant or its agent the original envelope bearing a
107 notation by the postal authorities that receipt was
108 refused.

109 (4) The papers referred to in subdivisions (2) and
110 (3) of this subsection (b) shall be filed within thirty
111 days after the return receipt or other official proof of
112 delivery or the original envelope bearing a notation of
113 refusal, as the case may be, is received by the plaintiff.
114 Service of process shall be complete ten days after such
115 process and the accompanying papers are filed in ac-
116 cordance with this section.

117 (5) Nothing in this section contained shall limit or
118 abridge the right to serve any process, notice or demand
119 upon any insurer in any other manner now or hereafter
120 permitted by law.

121 (c) (1) Before any unlicensed foreign or alien insurer
122 shall file or cause to be filed any pleading in any action,
123 suit or proceeding instituted against it, such unlicensed
124 insurer shall either (1) deposit with the clerk of the
125 court in which such action, suit or proceeding is pending,
126 cash or securities or file with such clerk a bond with good
127 and sufficient sureties, to be approved by the court, in an
128 amount to be fixed by the court sufficient to secure the
129 payment of any final judgment which may be rendered
130 in such action: *Provided*, That the court may in its
131 discretion make an order dispensing with such deposit or
132 bond where the auditor of the state shall have certified to
133 such court that such insurer maintains within this state
134 funds or securities in trust or otherwise sufficient and
135 available to satisfy any final judgment which may be
136 entered in such action, suit or proceeding; or (2) procure
137 a license to transact insurance in this state.

138 (2) The court in any action, suit or proceeding, in
139 which service is made in the manner provided in sub-
140 division (2) or (3) of subsection (b) of this section may,
141 in its discretion, order such postponement as may be
142 necessary to afford the defendant reasonable opportunity
143 to comply with the provisions of subdivision (1) of this
144 subsection (c) and to defend such action.

145 (3) Nothing in subdivision (1) of this subsection (c)
146 is to be construed to prevent an unlicensed foreign or
147 alien insurer from filing a motion to set aside service
148 thereof made in the manner provided in subdivision (2)
149 or (3) of subsection (b) of this section on the grounds
150 either (1) that such unlicensed insurer has not done any
151 of the acts enumerated in subdivision (1) of subsection
152 (b) of this section, or (2) that the person on whom
153 service was made pursuant to subdivision (3) of sub-
154 section (b) of this section was not doing any of the acts
155 therein enumerated.

156 (d) In any action against an unlicensed foreign or
157 alien insurer upon a contract of insurance issued or
158 delivered in this state to a resident thereof or to a
159 corporation authorized to do business therein, if the
160 insurer has failed for thirty days after demand prior to
161 the commencement of the action to make payment in
162 accordance with the terms of the contract, and it appears
163 to the court that such refusal was vexatious and without
164 reasonable cause, the court may allow to the plaintiff a
165 reasonable attorney's fee and include such fee in any
166 judgment that may be rendered in such action. Such fee
167 shall not exceed twelve and one-half percent of the
168 amount which the court finds the plaintiff is entitled to
169 recover against the insurer, but in no event shall such
170 fee be less than twenty-five dollars. Failure of an insurer
171 to defend any such action shall be deemed prima facie
172 evidence that its failure to make payment was vexatious
173 and without reasonable cause.

174 (e) The provisions of this section shall not apply to
175 any suit, action or proceeding against any unlicensed
176 foreign or alien insurer arising out of any contract of
177 excess line insurance effected in accordance with article
178 twelve of this chapter where any such contract contains
179 a provision designating the auditor or secretary of state
180 its true and lawful attorney upon whom may be served
181 all lawful process in any action, suit or proceeding
182 instituted by or on behalf of an insured or beneficiary
183 arising out of such contract of insurance.

CHAPTER 38. LIENS.**ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.****§38-1A-9. Action by secretary of state following service.**

1 Forthwith upon such service, said secretary of state
2 shall send to such trustee the second copy of such process
3 or notice, by registered or certified mail, return receipt
4 requested, to the address stated in such notation. The
5 third copy of such process or notice, bearing the acknowl-
6 edgement of the secretary of state of the fact of service
7 on him, with his notation of the mailing of the second
8 copy as above provided, shall be transmitted by the
9 secretary of state to the clerk of the court issuing the
10 process or to the person giving the notice, as the case may
11 be.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.****ARTICLE 2. CONSUMER CREDIT PROTECTION.****§46A-2-137. Service of process on certain nonresidents.**

1 Any nonresident person, except a nonresident cor-
2 poration authorized to do business in this state pursuant
3 to the provisions of chapter thirty-one of this code, who
4 takes or holds any negotiable instrument, nonnegotiable
5 instrument, or contract or other writing, arising from a
6 consumer credit sale or consumer lease which is subject
7 to the provisions of this article, other than a sale or lease
8 primarily for an agricultural purpose, or who is a lender
9 subject to the provisions of section one hundred three of
10 this article, shall be conclusively presumed to have ap-
11 pointed the secretary of state as his attorney-in-fact with
12 authority to accept service of notice and process in any
13 action or proceeding brought against him arising out of
14 such consumer credit sale, consumer lease or consumer
15 loan. A person shall be considered a nonresident hereunder
16 if he is a nonresident at the time such service of notice and
17 process is sought. No act of such person appointing the
18 secretary of state shall be necessary. Immediately after
19 being served with or accepting any such process or notice,

20 of which process or notice two copies for each defendant
21 shall be furnished the secretary of state with the original
22 notice or process, together with a fee of two dollars, the
23 secretary of state shall file in his office a copy of such
24 process or notice, with a note thereon endorsed of the
25 time of service or acceptance, as the case may be, and
26 transmit one copy of such process or notice by registered
27 or certified mail, return receipt requested, to such person
28 at his address, which address shall be stated in such
29 process or notice: *Provided*, That such return receipt shall
30 be signed by such person or an agent or employee of such
31 person if a corporation, or the registered or certified mail
32 so sent by said secretary of state is refused by the ad-
33 dressee and the registered or certified mail is returned to
34 said secretary of state, or to his office, showing thereon
35 the stamp of the U. S. postal service that delivery thereof
36 has been refused, and such return receipt or registered or
37 certified mail is appended to the original process or notice
38 and filed therewith in the clerk's office of the court from
39 which such process or notice was issued. But no process
40 or notice shall be served on the secretary of state or
41 accepted fewer than ten days before the return date
42 thereof. The court may order such continuances as may
43 be reasonable to afford each defendant opportunity to
44 defend the action or proceeding.

45 The provisions for service of process or notice herein
46 are cumulative and nothing herein contained shall be
47 construed as a bar to the plaintiff in any action from
48 having process or notice in such action served in any
49 other mode and manner provided by law.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

- §56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents or their administrators, etc.
- §56-3-33. Actions by or certain nonresident persons having certain contacts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents or their administrators, etc.

1 The operation by a nonresident, or by his duly autho-
2 rized agent, of a motor vehicle upon a public street, road
3 or highway of this state, shall be deemed equivalent to
4 an appointment by such nonresident of the secretary of
5 state, or his successor in office, to be his true and lawful
6 attorney, or the true and lawful attorney of his adminis-
7 trator, administratrix, executor or executrix in the event
8 said nonresident is a natural person and dies, upon whom
9 may be served all lawful process in any action or pro-
10 ceeding against him or if a natural person against his
11 administrator, administratrix, executor or executrix, in
12 any court of record in this state, including an action or
13 proceeding brought by a nonresident plaintiff or plaintiffs,
14 growing out of any accident or collision in which such
15 nonresident may be involved while so operating or so
16 permitting to be operated a motor vehicle on any such
17 street, road or highway, and such operation shall be a
18 signification of his agreement that any such process
19 against him, or if a natural person against his adminis-
20 trator, administratrix, executor or executrix, which is
21 served in the manner hereinafter provided, shall be of
22 the same legal force and validity as though said non-
23 resident or if a natural person his administrator, admin-
24 istratrix, executor or executrix were personally served
25 with a summons and complaint within this state.

26 Any such action or proceeding may be instituted, con-
27 tinued or maintained on behalf of or against the adminis-
28 trator, administratrix, executor or executrix of said non-
29 resident who dies during or subsequent to said operation
30 of a motor vehicle by such nonresident or his duly au-
31 thorized agent.

32 (a) At the time of filing a complaint and before a sum-
33 mons is issued thereon, the plaintiff, or someone for him,
34 shall execute a bond in the sum of one hundred dollars
35 before the clerk of the court, with surety to be approved
36 by said clerk, conditioned that on failure of the plaintiff

37 to prevail in the action that he will reimburse the de-
38 fendant, or cause him to be reimbursed, the necessary
39 expense incurred by him in and about the defense of the
40 action in this state, and upon the issue of a summons the
41 clerk will certify thereon that said bond has been given
42 and approved. Service shall be made by leaving the
43 original and two copies of both the summons and com-
44 plaint with the certificate aforesaid of the clerk thereon,
45 and a fee of two dollars with said secretary of state, or
46 in his office, and said service shall be sufficient upon said
47 nonresident or if a natural person his administrator,
48 administratrix, executor or executrix: *Provided*, That
49 notice of such service and a copy of the summons
50 and complaint shall forthwith be sent by regis-
51 tered or certified mail, return receipt requested, by said
52 secretary of state to the defendant, and the defendant's
53 return receipt signed by himself or his duly authorized
54 agent or the registered or certified mail so sent by said
55 secretary of state is refused by the addressee and the
56 registered or certified mail is returned to said secretary
57 of state, or to his office, showing thereon the stamp of
58 the post-office department that delivery has been refused,
59 is appended to the original summons and complaint, and
60 filed therewith in the clerk's office of the court from
61 which process issued. The court may order such continu-
62 ances as may be reasonable to afford the defendant oppor-
63 tunity to defend the action.

64 (b) The fee of two dollars, remitted to the said secre-
65 tary of state at the time of service, shall be taxed in the
66 costs of the proceeding and said secretary of state shall
67 pay into the state treasury all funds so coming into his
68 hands from such service. The secretary of state shall
69 keep a record in his office of all such process and the day
70 and hour of service thereof.

71 (c) The following words and phrases, when used in
72 this article, shall, for the purpose of this article and unless
73 a different intent on the part of the Legislature be ap-
74 parent from the context, have the following meanings:

75 (1) "Duly authorized agent" means and includes
76 among others a person who operates a motor vehicle in

77 this state for a nonresident as defined in this section and
78 chapter, in pursuit of business, pleasure, or otherwise, or
79 who comes into this state and operates a motor vehicle
80 therein for, or with the knowledge or acquiescence of,
81 such nonresident; and shall include among others a mem-
82 ber of the family of such nonresident or a person who,
83 at the residence, place of business or post office of such
84 nonresident, usually receives and receipts for mail ad-
85 dressed to such nonresident.

86 (2) "Motor vehicle" means and includes any self-
87 propelled vehicle, including motorcycle, tractor, and
88 trailer, not operated exclusively upon stationary tracks.

89 (3) "Nonresident" means any person who is not a resi-
90 dent of this state or resident who has moved from the
91 state subsequent to said accident or collision, and among
92 others includes a nonresident firm, partnership, corpora-
93 tion or voluntary association, or a firm, partnership, cor-
94 poration or voluntary association that has moved from
95 the state subsequent to said accident or collision.

96 (4) "Nonresident plaintiff or plaintiffs" means a non-
97 resident who institutes an action in a court in this state
98 having jurisdiction against a nonresident in pursuance of
99 the provisions of this article.

100 (5) "Street," "road" or "highway" means the entire
101 width between property lines of every way or place of
102 whatever nature when any part thereof is open to the
103 use of the public, as a matter of right, for purposes of
104 vehicular traffic.

105 (d) The provision for service of process herein is
106 cumulative and nothing herein contained shall be con-
107 strued as a bar to the plaintiff in any action from having
108 process in such action served in any other mode and
109 manner provided by law.

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

1 (a) The engaging by a nonresident, or by his duly

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

18 (1) Transacting any business in this state;

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

21 (3) Causing tortious injury by an act or omission in
22 this state;

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

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

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

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

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

46 (c) At the time of filing a complaint and before a
47 summons is issued thereon, the plaintiff, or someone for
48 him, shall execute a bond in the sum of one hundred
49 dollars before the clerk of the court, with surety to be
50 approved by said clerk, conditioned that on failure of
51 the plaintiff to prevail in the action or proceeding that he
52 will reimburse the defendant, or cause him to be re-
53 imburshed, the necessary taxable costs incurred by him
54 in and about the defense of the action or proceeding in
55 this state, and upon the issuance of a summons, the
56 clerk shall certify thereon that such bond has been
57 given and approved. Service shall be made by leaving
58 the original and two copies of both the summons and
59 the complaint with the certificate aforesaid of the clerk
60 thereon, and a fee of two dollars with the secretary of
61 state, or in his office, and such service shall be sufficient
62 upon such nonresident: *Provided*, That notice of such
63 service and a copy of the summons and complaint shall
64 forthwith be sent by registered or certified mail, return
65 receipt requested, by the secretary of state to the defend-
66 ant and the defendant's return receipt signed by himself
67 or his duly authorized agent or the registered or certified
68 mail so sent by the secretary of state which is refused by
69 the addressee and which registered or certified mail is re-
70 turned to the secretary of state, or to his office, showing
71 thereon the stamp of the post-office department that
72 delivery has been refused, shall be appended to the
73 original summons and complaint, and filed therewith
74 in the clerk's office of the court from which process is
75 sued. If any defendant served with summons and com-
76 plaint fails to appear and defend within thirty days of
77 service, judgment by default may be rendered against
78 him at any time thereafter. The court may order such
79 continuances as may be reasonable to afford the defendant
80 opportunity to defend the action or proceeding.

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

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

92 (1) "Duly authorized agent" means and includes
93 among others a person who, at the direction of or with
94 the knowledge or acquiescence of a nonresident, engages
95 in such act or acts and shall include among others a
96 member of the family of such nonresident or person
97 who, at the residence, place of business or post office of
98 such nonresident, usually receives and receipts for mail
99 addressed to such nonresident.

100 (2) "Nonresident" means any person, other than
101 voluntary unincorporated associations, who is not a
102 resident of this state or a resident who has moved from
103 this state subsequent to engaging in such act or acts,
104 and among others includes a nonresident firm, partner-
105 ship, or corporation or a firm, partnership, or corpora-
106 tion which has moved from this state subsequent to any
107 of said such act or acts.

108 (3) "Nonresident plaintiff or plaintiffs" means a non-
109 resident of this state who institutes an action or proceed-
110 ing in a circuit court in this state having jurisdiction
111 against a nonresident of this state pursuant to the provi-
112 sions of this section.

113 (f) The provision for service of process herein is
114 cumulative and nothing herein contained shall be con-
115 strued as a bar to the plaintiff in any action or proceeding
116 from having process in such action served in any other
117 mode or manner provided by the law of this state or by
118 the law of the place in which the service is made for

119 service in that place in an action in any of its courts of
120 general jurisdiction.

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

CHAPTER 103

(S. B. 390—By Mr. Gainer and Mr. Hinkle)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and five, article one-e, 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 ten, all relating to changing the name of the southern interstate nuclear compact to the southern states energy compact; increasing membership of said compact; southern states energy board; increasing membership of said board; alternate members; policy and purpose of compact; expanding powers of said board and compact to include the areas of energy and environment; expenses of members; eligible parties to compact; effective date; and consent of Congress.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three and five, article one-e, 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 be further amended by adding thereto a new section, designated section ten, all to read as follows:

ARTICLE 1E. SOUTHERN STATES ENERGY COMPACT.

§29-1E-1. Definitions.

§29-1E-2. Enactment of compact.

§29-1E-3. Membership of board.

§29-1E-5. Duties of members of board.

§29-1E-10. Effective date of amendments to compact; prior compact to continue in force.

§29-1E-1. Definitions.

1 As used in this article, unless the context requires
2 otherwise:

3 (1) "Compact" means the southern states energy
4 compact;

5 (2) "Board" means the southern states energy board.

§29-1E-2. Enactment of compact.

1 The southern states energy compact is hereby enacted
2 into law and entered into by the state of West Virginia
3 with any and all states legally joining therein in ac-
4 cordance with its terms, in the form substantially as
5 follows:

6 SOUTHERN STATES ENERGY COMPACT

7 Article I. Policy and Purpose

8 The party states recognize that the proper employment
9 and conservation of energy, and employment of energy-
10 related facilities, materials, and products, within the
11 context of a responsible regard for the environment, can
12 assist substantially in the industrialization of the south
13 and the development of a balanced economy for the
14 region. They also recognize the optimum benefit from
15 and acquisition of energy resources and facilities requires
16 systematic encouragement, guidance, and assistance from
17 the party states on a cooperative basis. It is the policy
18 of the party states to undertake such cooperation on a
19 continuing basis; it is the purpose of this compact to
20 provide the instruments and framework for such a co-
21 operative effort to improve the economy of the south
22 and contribute to the individual and community well-
23 being of the region's people.

24

Article II. The Board

25 (a) There is hereby created an agency of the party
26 states to be known as the "southern states energy board"
27 (hereinafter called the board). The board shall be com-
28 posed of three members from each party state, one of
29 whom shall be appointed or designated in each state to
30 represent the governor, the state Senate, and the state
31 House of Delegates, respectively. Each member shall be
32 designated or appointed in accordance with the law of
33 the state which he represents and serving and subject to
34 removal in accordance with such law. Any member of
35 the board may provide for the discharge of his duties
36 and the performance of his functions thereon (either for
37 the duration of his membership or for any lesser period
38 of time) by a deputy or assistant, if the laws of his state
39 make specific provision therefor. The federal government
40 may be represented without vote if provision is made
41 by federal law for representation.

42 (b) Each party state shall be entitled to one vote
43 on the board to be determined by majority vote of each
44 member or member's representative from the party state
45 present and voting on any question. No action of the
46 board shall be binding unless taken at a meeting at which
47 a majority of all party states are represented and unless
48 a majority of the total number of votes on the board are
49 cast in favor thereof.

50 (c) The board shall have a seal.

51 (d) The board shall elect annually, from among its
52 members, a chairman, a vice chairman, and a treasurer.
53 The board shall appoint an executive director who shall
54 serve at its pleasure and who shall also act as secretary,
55 and who, together with the treasurer, shall be bonded
56 in such amounts as the board may require.

57 (e) The executive director, with the approval of the
58 board, shall appoint and remove or discharge such per-
59 sonnel as may be necessary for the performance of the
60 board's functions irrespective of the civil service, per-

61 sonnel or other merit system laws of any of the party
62 states.

63 (f) The board may establish and maintain, inde-
64 pendently or in conjunction with any one or more of the
65 party states, a suitable retirement system for its full-
66 time employees. Employees of the board shall be eligible
67 for social security coverage in respect of old age and
68 survivors insurance provided that the board takes such
69 steps as may be necessary pursuant to federal law to
70 participate in such program of insurance as a govern-
71 mental agency or unit. The board may establish and
72 maintain or participate in such additional programs of
73 employee benefits as may be appropriate.

74 (g) The board may borrow, accept, or contract for the
75 services of personnel from any state or the United States
76 or any subdivision or agency thereof, from any inter-
77 state agency, or from any institution, person, firm or
78 corporation.

79 (h) The board may accept for any of its purposes and
80 functions under this compact any and all donations, and
81 grants of money, equipment, supplies, materials, and
82 services (conditional or otherwise) from any state or
83 the United States or any subdivision or agency thereof,
84 or interstate agency, or from any institution, person, firm
85 or corporation, and may receive, utilize and dispose of
86 the same.

87 (i) The board may establish and maintain such facili-
88 ties as may be necessary for the transacting of its busi-
89 ness. The board may acquire, hold, and convey real
90 and personal property and any interest therein.

91 (j) The board shall adopt bylaws, rules, and regula-
92 tions for the conduct of its business, and shall have the
93 power to amend and rescind these bylaws, rules and
94 regulations. The board shall publish its bylaws, rules
95 and regulations in convenient form and shall file a copy
96 thereof, and shall also file a copy of any amendment
97 thereto, with the appropriate agency or officer in each
98 of the party states.

99 (k) The board annually shall make to the governor
100 of each party state, a report covering the activities of
101 the board for the preceding year, and embodying such
102 recommendations as may have been adopted by the
103 board, which report shall be transmitted to the legisla-
104 ture of said state. The board may issue such additional
105 reports as it may deem desirable.

106

Article III. Finances

107 (a) The board shall submit to the executive head or
108 designated officer or officers of each party state a budget
109 of its estimated expenditures for such period as may be
110 required by the laws of that jurisdiction for presentation
111 to the legislature thereof.

112 (b) Each of the board's budgets of estimated expendi-
113 tures shall contain specific recommendations of the
114 amount or amounts to be appropriated by each of the
115 party states. One half of the total amount of each budget
116 of estimated expenditures shall be apportioned among
117 the party states in equal shares; one quarter of each
118 such budget shall be apportioned among the party states
119 in accordance with the ratio of their populations to
120 the total population of the entire group of party states
121 based on the last decennial federal census; and one
122 quarter of each such budget shall be apportioned among
123 the party states on the basis of the relative average
124 per capita income of the inhabitants in each of the
125 party states based on the latest computations pub-
126 lished by the federal census-taking agency. Subject
127 to appropriation by their respective legislatures, the
128 board shall be provided with such funds by each of the
129 party states as are necessary to provide the means of
130 establishing and maintaining facilities, a staff of per-
131 sonnel, and such activities as may be necessary to fulfill
132 the powers and duties imposed upon and entrusted to
133 the board.

134 (c) The board may meet any of its obligations in
135 whole or in part with funds available to it under article
136 two (h) of this compact, provided that the board takes

137 specific action setting aside such funds prior to the in-
138 curring of any obligation to be met in whole or in part
139 in this manner. Except where the board makes use of
140 funds available to it under article two (h) hereof, the
141 board shall not incur any obligation prior to the allot-
142 ment of funds by the party jurisdictions adequate to
143 meet the same.

144 (d) The board shall keep accurate accounts of all
145 receipts and disbursements. The receipts and disburse-
146 ments of the board shall be subject to the audit and
147 accounting procedures established under its bylaws.
148 However, all receipts and disbursements of funds
149 handled by the board shall be audited yearly by a quali-
150 fied public accountant and the report of the audit shall
151 be included in and become part of the annual report of
152 the board.

153 (e) The accounts of the board shall be open at any
154 reasonable time for inspections.

155 **Article IV. Advisory Committees**

156 The board may establish such advisory and technical
157 committees as it may deem necessary, membership on
158 which to include but not be limited to private citizens,
159 expert and lay personnel, representatives of industry,
160 labor, commerce, agriculture, civic associations, medicine,
161 education, voluntary health agencies, and officials of
162 local, state and federal government, and may cooperate
163 with and use the services of any such committees and
164 the organizations which they represent in furthering any
165 of its activities under this compact.

166 **Article V. Powers**

167 The board shall have power to:

168 (a) Ascertain and analyze on a continuing basis the
169 position of the south with respect to energy, energy-
170 related industries and environmental concerns.

171 (b) Encourage the development, conservation and re-
172 sponsible use of energy and energy-related facilities,

173 installations, and products as part of a balanced economy
174 and healthy environment.

175 (c) Collect, correlate, and disseminate information re-
176 lating to civilian uses of energy and energy-related ma-
177 terials and products.

178 (d) Conduct, or cooperate in conducting, programs of
179 training for state and local personnel engaged in any
180 aspect of:

181 (1) Energy, environment, and applications of energy,
182 environmental, and related concerns to industry, medi-
183 cine, or education or the promotion or regulation thereof.

184 (2) The formulation or administration of measures
185 designed to promote safety in any matter related to the
186 development, use or disposal of energy and energy-related
187 materials, products, installations or wastes.

188 (e) Organize and conduct, or assist and cooperate in
189 organizing and conducting, demonstrations of energy
190 product, material, or equipment use and disposal and of
191 proper techniques or processes for the application of
192 energy resources to the civilian economy or general
193 welfare.

194 (f) Undertake such nonregulatory functions with re-
195 spect to sources of radiation as may promote the economic
196 development and general welfare of the region.

197 (g) Study industrial, health, safety, and other stan-
198 dards, laws, codes, rules, regulations, and administrative
199 practices in or related to energy and environmental
200 fields.

201 (h) Recommend such changes in, or amendments or
202 additions to the laws, codes, rules, regulations, adminis-
203 trative procedures and practices or ordinances of the
204 party states in any of the fields of its interest and com-
205 petence as in its judgment may be appropriate. Any
206 such recommendation shall be made through the appro-
207 priate state agency with due consideration of the desira-
208 bility of uniformity but shall also give appropriate
209 weight to any special circumstance which may justify
210 variations to meet local conditions.

211 (i) Prepare, publish and distribute (with or without
212 charge) such reports, bulletins, newsletters or other ma-
213 terial as it deems appropriate.

214 (j) Cooperate with the United States department of
215 energy or any agency successor thereto, any other officer
216 or agency of the United States and any other govern-
217 mental unit or agency or officer thereof, and with any
218 private persons or agencies in any of the fields of its
219 interest.

220 (k) Act as licensee of the United States government
221 or any party state with respect to the conduct of any
222 research activity requiring such license and operate such
223 research facility or undertake any program pursuant
224 thereto.

225 (l) Ascertain from time to time such methods, prac-
226 tices, circumstances, and conditions as may bring about
227 the prevention and control of energy and environmental
228 incidents in the area comprising the party states, to
229 coordinate the nuclear, environmental and other energy-
230 related incident prevention and control plans and the
231 work relating thereto of the appropriate agencies of the
232 party states and to facilitate the rendering of aid by
233 the party states to each other in coping with energy and
234 environmental incidents. The board may formulate and,
235 in accordance with need from time to time, revise a
236 regional plan or regional plans for coping with energy
237 and environmental incidents within the territory of the
238 party states as a whole or within any subregion or sub-
239 regions of the geographic area covered by this compact.

240 **Article VI. Supplementary Agreements**

241 (a) To the extent that the board has not undertaken
242 an activity or project which would be within its power
243 under the provisions of article five of this compact, any
244 two or more of the party states (acting by their duly
245 constituted administrative officials) may enter into sup-
246plementary agreements for the undertaking and con-
247tinuance of such an activity or project. Any such agree-
248ment shall specify its purpose or purposes; its duration

249 and the procedure for termination thereof or withdrawal
250 therefrom; the method of financing and allocating the
251 costs of the activity or project; and such other matters
252 as may be necessary or appropriate. No such supple-
253 mentary agreement entered into pursuant to this article
254 shall become effective prior to its submission to and
255 approval by the board. The board shall give such ap-
256 proval unless it finds that the supplementary agreement
257 or the activity or project contemplated thereby is in-
258 consistent with the provisions of this compact or a pro-
259 gram or activity conducted by or participated in by the
260 board.

261 (b) Unless all of the party states participate in a
262 supplementary agreement, any cost or costs thereof shall
263 be borne separately by the states party thereto. How-
264 ever, the board may administer or otherwise assist in
265 the operation of any supplementary agreement.

266 (c) No party to a supplementary agreement entered
267 into pursuant to this article shall be relieved thereby of
268 any obligation or duty assumed by said party state under
269 or pursuant to this compact, except that timely and
270 proper performance of such obligation of duty by means
271 of the supplementary agreement may be offered as per-
272 formance pursuant to the compact.

273 **Article VII. Other Laws and Relationships**

274 Nothing in this compact shall be construed to:

275 (a) Permit or require any person or other entity to
276 avoid or refuse compliance with any law, rule, regula-
277 tion, order or ordinance of a party state or subdivision
278 thereof now or hereafter made, enacted or in force.

279 (b) Limit, diminish, or otherwise impair jurisdiction
280 exercised by the United States department of energy,
281 any agency successor thereto, or any other federal de-
282 partment, agency or officer pursuant to and in conformity
283 with any valid and operative act of Congress.

284 (c) Alter the relations between and respective in-
285 ternal responsibilities of the government of a party state
286 and its subdivisions.

287 (d) Permit or authorize the board to exercise any
288 regulatory authority or to own or operate any nuclear
289 reactor for the generation of electric energy; nor shall
290 the board own or operate any facility or installation for
291 industrial or commercial purposes.

292 **Article VIII. Eligible Parties, Entry Into Force and**
293 **Withdrawal**

294 (a) Any or all of the states of Alabama, Arkansas,
295 Delaware, Florida, Georgia, Kentucky, Louisiana, Mary-
296 land, Mississippi, Missouri, North Carolina, Oklahoma,
297 South Carolina, Tennessee, Texas, Virginia, West Vir-
298 ginia, the Commonwealth of Puerto Rico and the United
299 States Virgin Islands shall be eligible to become party
300 to this compact.

301 (b) As to any eligible party state this compact shall
302 become effective when its legislature shall have enacted
303 the same into law: *Provided*, That it shall not become
304 initially effective until enacted into law by seven states.

305 (c) Any party state may withdraw from this compact
306 by enacting a statute repealing the same, but no such
307 withdrawal shall become effective until the governor of
308 the withdrawing state shall have sent formal notice in
309 writing to the governor of each other party state inform-
310 ing said governors of the action of the legislature in
311 repealing the compact and declaring an intention to with-
312 draw.

313 **Article IX. Severability and Construction**

314 The provisions of this compact and of any supplement-
315 ary agreement entered into hereunder shall be severable
316 and if any phrase, clause, sentence or provision of this
317 compact or such supplementary agreement is declared
318 to be contrary to the constitution of any participating
319 state or of the United States or the applicability thereof
320 to any government, agency, person, or circumstance is
321 held invalid, the validity of the remainder of this compact
322 or such supplementary agreement and the applicability
323 thereof to any government, agency, person or circum-
324 stance shall not be affected thereby. If this compact or

325 any supplementary agreement entered into hereunder
326 shall be held contrary to the constitution of any state
327 participating therein, the compact or such supplementary
328 agreement shall remain in full force and effect as to the
329 remaining states and in full force and effect as to the state
330 affected as to all severable matters. The provisions of this
331 compact and of any supplementary agreement entered
332 into pursuant hereto shall be liberally construed to ef-
333 fectuate the purposes thereof.

§29-1E-3. Membership of board.

1 The governor shall appoint one of this state's three
2 board members of the southern states energy board which
3 is established by article two of the compact. Such mem-
4 ber shall serve at the pleasure of the governor. The
5 president of the Senate and the speaker of the House of
6 Delegates shall each appoint one member of their respec-
7 tive houses, to serve at their pleasure, as board members
8 of the southern states energy board. The president, the
9 speaker and the governor are each hereby authorized to
10 appoint an alternate member who may serve at and for
11 such time as the regular member shall designate and
12 shall have the same power and authority as the regular
13 member when so serving.

§29-1E-5. Duties of members of board.

1 (a) The members of the board appointed and serving
2 in accordance with section two of this article shall assist
3 in the coordination of atomic and other energy-related
4 activities within this state.

5 (b) The board members are hereby authorized and em-
6 powered to assist in the orderly development of atomic
7 and other energy-related knowledge within the state of
8 West Virginia.

§29-1E-10. Effective date of amendments to compact; prior compact to continue in force.

1 The amendatory provisions to section two of this article
2 enacted in the year one thousand nine hundred seventy-
3 nine shall become effective at such time as nine of the

4 eligible party states to the southern interstate nuclear
5 compact, which may include the Commonwealth of Puer-
6 to Rico, and the United States Virgin Islands, approve
7 substantially the same changes in the compact as are
8 provided for in section two of this article and the Con-
9 gress of the United States consents to the compact, sub-
10 stantially as amended by section two of this article; until
11 such time, this state shall continue to remain a member
12 of the southern interstate nuclear compact as set forth in
13 chapter three, acts of the Legislature, one thousand nine
14 hundred sixty-four.

CHAPTER 104

(Com. Sub. for H. B. 825—By Miss Shuman and Mr. Greer)

[Passed February 2, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to providing for the periodic and systematic termination of governmental entities and programs in the state of West Virginia and the powers and jurisdiction of such governmental entities and programs; performance and fiscal audits; providing for the continuation of such governmental entities, programs and powers and jurisdiction for a period of one year following termination and the cessation of existence, unless continued and reestablished; providing for the continuation and reestablishment of governmental entities and programs scheduled for termination for a period of time not to exceed six years; establishing the joint committee on government operations; the powers and duties of said committee; subpoenas; enforcement of subpoenas; penalties; reports by the committee; relating to preservation of rights and claims of both persons and governmental entities; and relating to the right of members of the Legislature to introduce and the Legislature to consider bills creating new governmental entities or amending laws relating to existing governmental entities.

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 ten, to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

- §4-10-1. Short title.
- §4-10-2. Legislative findings.
- §4-10-3. Definitions.
- §4-10-4. Termination of governmental entities or programs.
- §4-10-5. Continuance of existence of governmental entity or program after termination and purpose therefor; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated governmental entity or program.
- §4-10-6. Continuation or reestablishment of governmental entities or programs scheduled for termination.
- §4-10-7. Joint committee on government operations created; membership; compensation and expenses; meetings.
- §4-10-8. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses.
- §4-10-9. Performance and fiscal audits of governmental entities and programs by the committee.
- §4-10-10. Reports by the committee.
- §4-10-11. Bill for continuation and reestablishment of governmental entity.
- §4-10-12. Preservation of rights and claims.
- §4-10-13. Article not to be construed as limiting new legislation.
- §4-10-14. Immediate termination of certain governmental entities.

§4-10-1. Short title.

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

§4-10-2. Legislative findings.

- 1 The Legislature finds that state governmental actions have
- 2 produced a substantial increase in the number of governmental
- 3 entities, growth of programs and proliferation of rules and
- 4 regulations and that the whole process developed without suf-
- 5 ficient legislative oversight, regulatory accountability or a
- 6 system of checks and balances; that often governmental en-
- 7 tities have been created without a demonstrable need and
- 8 evidence that the benefits to the public clearly justify their

9 creation; that once established, governmental entities tend to
10 acquire a "permanent" status, often without regard for the
11 condition that originally gave rise to their establishment; that
12 the personnel of such entities are often beyond the effective
13 control of elected officials, and that efforts to force their
14 modernization or even to review their performance and impact
15 have typically proven difficult at best; that too often, govern-
16 mental entities acquire a combination of autonomy and au-
17 thority inconsistent with democratic principles as well as
18 a capacity for self-perpetuation incompatible with principles
19 of accountability; and that by establishing a system for the
20 termination, continuation or reestablishment of such govern-
21 mental entities, the position of the Legislature to evaluate
22 the need for the continued existence of existing and future
23 governmental entities will be enhanced.

§4-10-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 a different meaning:

3 (1) "Committee" means the joint committee on govern-
4 ment operations, hereinafter created, to perform duties under
5 this article.

6 (2) "Governmental entity" means any office, department,
7 board, agency, commission, bureau, authority, division or
8 council of the state of West Virginia. In addition, the term
9 "governmental entity" wherever used in this article shall be
10 construed to also mean the "powers and jurisdiction" vested
11 in officers mentioned in section four of this article but not the
12 actual officers themselves.

13 (3) "Program" means a program administered by a govern-
14 mental entity and supported by appropriations made by the
15 Legislature.

16 (4) "Person" means any individual, partnership, corpora-
17 tion, labor organization, association, personal representative of
18 a decedent, trustee, trustee in bankruptcy, receiver, guardian,
19 committee for an incompetent or conservator.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall be

2 terminated on the dates indicated but no governmental entity
3 or program shall be terminated under this article unless a per-
4 formance and fiscal audit has been conducted of such entity
5 or program, except as authorized under section fourteen of
6 this article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty: division of archives and history; state board of insur-
9 ance; interstate commission on the Potomac River basin.

10 (2) On the first day of July, one thousand nine hundred
11 eighty-two: Ohio River basin commission; Ohio River valley
12 water sanitation commission; Commission on postmortem
13 examination; state commission on manpower training and 11
14 technology; southern regional education board; commission on
15 uniform state laws; judicial council of West Virginia; geo-
16 logical and economic survey commission; interagency council
17 on child development service; motor vehicle license certificate
18 appeal board; child welfare licensing board.

19 (3) On the first day of July, one thousand nine hundred
20 eighty-four: bureau of labor and department of weights and
21 measures in the department of labor; the following divisions
22 of the programs of the department of agriculture: Soil conser-
23 vation committee, rural resource division, meat inspection;
24 and the following divisions of programs of the department of
25 natural resources: Water resources, U. S. geological survey,
26 rabies control, work incentive program; West Virginia alcoholic
27 beverage control licensing advisory board; driver's licensing
28 advisory board; oil and gas inspectors' examining board.

**§4-10-5. Continuance of existence of governmental entity or pro-
gram after termination and purpose therefor; continu-
ance of powers and authority after termination; cessa-
tion of all activities; reestablishment of terminated gov-
ernment entity or program.**

1 Upon termination, each governmental entity or program
2 shall continue in existence until the first day of July of the
3 next succeeding year for the purpose of winding up its affairs.
4 During such year, termination shall not reduce or otherwise
5 limit the powers or authority of each such governmental en-

6 tity or program. Upon the expiration of one year after termi-
7 nation, each such governmental entity or program shall cease
8 all activities: *Provided*, That a governmental entity or pro-
9 gram which has been terminated pursuant to the provisions of
10 this article, may be reestablished by the Legislature.

§4-10-6. Continuation or reestablishment of governmental entities or programs scheduled for termination.

1 The life of any governmental entity or program scheduled
2 for termination under the provisions of section four of this
3 article may be continued or reestablished by the Legislature
4 for a period of time not to exceed six years.

§4-10-7. Joint committee on government operations created; membership; compensation and expenses; meetings.

1 There is hereby created a statutory body to be known as the
2 joint committee on government operations. Said committee
3 shall be composed of five members of the Senate, to be ap-
4 pointed by the president thereof, no more than three of
5 whom shall be appointed from the same political party; five
6 members of the House of Delegates, to be appointed by the
7 speaker thereof, no more than three of whom shall be appoint-
8 ed from the same political party; and five citizens of this state
9 who are not legislators, public officials or public employees,
10 to be appointed by the governor to serve at his will and
11 pleasure, not more than three of whom shall be appointed from
12 the same political party, and at least one of whom shall reside
13 in each congressional district of this state. All citizen members
14 shall sign a conflict of interest statement. The committee shall
15 be headed by two cochairmen, one to be selected by the
16 president of the Senate from the members appointed from the
17 Senate, and one to be selected by the speaker of the House of
18 Delegates from the members appointed from the House of
19 Delegates. All members of the committee shall serve until
20 their successors shall have been appointed as heretofore pro-
21 vided. Members of the committee shall receive such compen-
22 sation and reimbursement for expenses in connection with
23 performance of interim duties between regular sessions of the
24 Legislature as may be authorized by the citizens legislative
25 compensation commission established by section thirty-three,

26 article six of the constitution of West Virginia. Each citizen
27 member of the committee shall receive thirty-five dollars
28 per diem for each day or substantial portion thereof that he is
29 engaged in the work of the committee, in addition to reim-
30 bursement for his necessary expenses incurred in the perfor-
31 mance of his duties under this article, such reimbursement to
32 be subject to the same limitations as govern the expenses of
33 the legislative members of the committee. Compensation and
34 expenses shall be paid from an appropriation to be made
35 expressly for the committee, but if no such appropriation be
36 made or the total amount appropriated has been expended,
37 such expenses shall be paid from the appropriation under
38 "Account No. 103 for Joint Expenses," but no expense of any
39 kind whatever payable under said Account No. 103 for joint
40 expenses shall be incurred unless first approved by the joint
41 committee on government and finance. The committee shall
42 meet upon call of the cochairmen or either of them and may
43 meet at any time, both during sessions of the Legislature and
44 in the interim.

§4-10-8. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses.

1 In order to carry out the duties set forth in section nine
2 of this article, the committee, or any duly authorized em-
3 ployee of the committee, shall have access to any and all
4 records of every state governmental entity or program sched-
5 uled for termination under the provisions of section four of this
6 article.

7 In addition to its regular and special meetings, the com-
8 mittee, or any employee duly authorized by the committee, is
9 empowered to hold public hearings in furtherance of the pur-
10 poses of this article, at such times and places within the state
11 as may be deemed desirable, and any member of the com-
12 mittee shall have the power to administer oaths to persons
13 testifying at such hearings or meetings.

14 By subpoena, issued over the signature of either cochairman
15 of the committee and served in the manner provided by law,
16 the committee may summon and compel the attendance of

17 witnesses and their examination under oath and the production
18 of all books, papers, documents and records necessary or con-
19 venient to be examined and used by the committee in the per-
20 formance of its duties. If any witness subpoenaed to appear at
21 any hearing or meeting shall refuse or fail to appear or to
22 answer questions put to him, or shall refuse or fail to produce
23 books, papers, documents or records within his control when
24 the same are demanded, the committee, in its discretion, may
25 enforce obedience to its subpoena by attachment, fine or im-
26 prisonment, as provided in section five, article one of this
27 chapter; or it may report the facts to the circuit court of Ka-
28 nawha County or any other court of competent jurisdiction
29 and such court shall compel obedience to the subpoena as
30 though such subpoena had been issued by such court in the
31 first instance.

32 Witnesses subpoenaed to attend such hearings or meetings,
33 except officers or employees of the state, shall be allowed the
34 same mileage and per diem as is allowed witnesses before any
35 petit jury.

§4-10-9. Performance and fiscal audits of governmental entities and programs by the committee.

1 It shall be the duty of the committee to conduct a perfor-
2 mance and fiscal audit of every governmental entity or program
3 scheduled for termination to ascertain whether there is a de-
4 monstrable need for the continuation of the particular entity or
5 program under consideration, and whether the entity or pro-
6 gram should be continued.

7 Following a performance and fiscal audit, as hereinafter
8 provided, the committee shall cease further inquiry regarding
9 any such governmental entity or program and shall report its
10 findings and recommendations to the Legislature as provided
11 in section ten of this article.

12 In conducting such performance and fiscal audits, the com-
13 mittee shall consider all relevant factors and, among other
14 things, determine the following:

15 (1) The nature of the objectives intended for the program or
16 entity and the problem or need which it was intended to ad-

17 dress, the extent to which the objectives have been achieved,
18 and any activities of the entity or program in addition to
19 those granted by statute and the authority for these activities;

20 (2) The extent to which the governmental entity or program
21 has operated in the public interest and the extent to which its
22 operation has been impeded or enhanced by existing statutes
23 and any other circumstances bearing upon the governmental
24 entity's or program's capacity or authority to operate in the
25 public interest, including budgetary, resource and personnel
26 matters;

27 (3) The extent to which the jurisdiction of the entity or
28 program duplicates those of other entities and programs and the
29 extent to which the entity or program or its activities could be
30 consolidated with others;

31 (4) The efficiency with which the agency operates;

32 (5) The extent to which the governmental entity or program
33 has recommended statutory changes to the Legislature which
34 would benefit the public;

35 (6) The extent to which the entity or program issues and
36 enforces rules relating to potential conflicts of interest of its
37 employees;

38 (7) The extent to which affirmative action requirements of
39 state and federal statutes and constitutions have been complied
40 with by the governmental entity or program;

41 (8) The extent to which the governmental entity or program
42 has encouraged participation by the public in making its de-
43 cisions;

44 (9) The impact in terms of federal intervention or loss of
45 federal funds if the agency is abolished;

46 (10) The extent to which the governmental entity or pro-
47 gram has caused an unnecessary burden on any citizen or
48 other governmental entity or program by its decisions and
49 activities.

50 The joint committee on government operations may employ
51 such persons, skilled in the field of performance audit, as it

52 may deem necessary to carry out its duties and responsibilities
53 under this section.

§4-10-10. Reports by the committee.

1 The committee shall complete its deliberations with respect
2 to any governmental entity or program scheduled to be termi-
3 nated and make a report thereon to the Legislature not later
4 than ten days after the Legislature convenes in regular session
5 in the year of the scheduled termination for the entity or
6 program: *Provided*, That any such report required in the year
7 one thousand nine hundred eighty-one, and every fourth year
8 thereafter shall be made not later than ten days after the Legis-
9 lature convenes on the second Wednesday in February. Such
10 report shall consist of a full and complete analysis of the gov-
11 ernmental entity or program including the need for the govern-
12 mental entity or program, the benefits to the public as opposed
13 to the burden on the public and such other matters as are
14 expressly mandated to be considered by the committee as set
15 forth in section nine of this article, together with the recom-
16 mendations of the committee. The committee shall make one
17 of three recommendations: (1) The governmental entity or
18 program be terminated as scheduled, (2) the governmental
19 entity or program be continued and reestablished, or (3) the
20 governmental entity or program be continued and reestablished,
21 but the statutes governing the entity should be amended in
22 specific ways to correct discriminatory practices and proce-
23 dures, burdensome rules and regulations, lack of protection of
24 the public interest, inefficiency, overlapping of jurisdiction with
25 other governmental entities, unwarranted exercise of authority
26 either in law or in fact and any other deficiencies.

27 Copies of such reports shall be made immediately available
28 to all members of the Legislature, to the governmental entity or
29 program which is the subject of the report and the public
30 generally. A copy of each report shall be formally filed by the
31 committee with the clerk of each house.

**§4-10-11. Bill for continuation and reestablishment of govern-
mental entity.**

1 In the event the committee recommends the continuation
2 and reestablishment of such governmental entity or program,

3 its report shall be accompanied by a bill originating in such
4 standing committee to effectuate its recommendation.

5 No bill shall provide for the continuation and reestablish-
6 ment of more than one governmental entity or program.

§4-10-12. Preservation of rights and claims.

1 Nothing in this article shall be construed as adversely
2 affecting any right or claim by any person against a govern-
3 mental entity or program or by any governmental entity or
4 program against any person. Responsibility for prosecuting or
5 defending any such rights or claims should the Legislature
6 fail to continue and reestablish a governmental entity or pro-
7 gram within one year after its termination shall be assumed
8 by the attorney general of the state.

§4-10-13. Article not to be construed as limiting new legislation.

1 Nothing in this article shall be construed as limiting or
2 interfering with the right of any member of the Legislature to
3 introduce or the Legislature from considering any bill that
4 would create a new state governmental entity or program or
5 amend the law with respect to an existing one.

§4-10-14. Immediate termination of certain governmental entities.

1 (a) The Legislature finds that the following govern-
2 mental entities or programs are inactive and unnecessary and
3 should not be continued:

4 (1) The commission on energy, economy and environment,
5 created in article seventeen, chapter five of this code;

6 (2) The bureau of negro welfare and statistics, created
7 in article five, chapter twenty-nine of this code;

8 (3) The Droop mountain battlefield commission, created
9 in section one, article four, chapter twenty of this code;

10 (4) The Prickett's Fort state park commission, created
11 in section one, article four, chapter twenty of this code;

12 (5) The Point Pleasant battle monument commission,
13 created in section one, article four, chapter twenty of this
14 code;

15 (6) The Philippi battlefield memorial commission,
16 created in section one, article four, chapter twenty of this
17 code; and

18 (7) The mining council, created in section two, article
19 six-b, chapter twenty of this code.

20 (b) The governmental entities or programs listed in sub-
21 section (a) of this section shall be terminated on the first
22 day of July, one thousand nine hundred seventy-nine.

CHAPTER 105

(Com. Sub. for H. B. 920—By Mr. Shiflet and Mr. Milleson)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article three by adding thereto a new section, designated section two-a, all relating to the assessment of property for ad valorem tax purposes; requiring notice to property owners when the assessed valuation of any item of real property is to be increased more than ten percent higher than the assessed valuation on such property in the previous tax year; the duties of the assessor and the county commission sitting as the board of equalization and review with respect thereto; the time of such notice; the time of meeting of the county commission sitting as the board of equalization and review and the duration of such meeting; prohibiting entry of such increase in the property books until the required notice is given or satisfied; and the methods by which such notice may be given, satisfied or waived.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to further amend said article three by

adding thereto a new section, designated section two-a, all to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2a. Notice of increased assessment required; exceptions to notice.

§11-3-24. Review and equalization by county commission.

§11-3-2a. Notice of increased assessment required; exceptions to notice.

1 If the assessor determines the assessed valuation of any item
2 of real property is more than ten percent greater than the val-
3 uation assessed for that item in the last tax year and the in-
4 crease be entered in the property books as provided in section
5 nineteen of this article, the assessor shall give notice of the in-
6 crease to the person assessed or the person controlling the
7 property as provided in section two of this article. The notice
8 must be given at least fifteen days prior to the first meeting in
9 February at which the county commission meets as the board of
10 equalization and review for that tax year and advise the person
11 assessed or the person controlling the property of his right to
12 appear and seek an adjustment in the assessment. The notice
13 shall be made by first class United States postage mailed
14 to the address of the person assessed or the person con-
15 trolling the property for payment of tax on the item in the
16 previous year, unless there was a general increase of the en-
17 tire valuation in any one or more districts in which case
18 the notice shall be by publication thereof by a Class II-O legal
19 advertisement in compliance with the provisions of article
20 three, chapter fifty-nine of this code, and the area for the
21 publication is the county. The requirement of notice under this
22 section is satisfied and waived if personal notice of the increase
23 is shown by:

24 (1) The taxpayer having signed the assessment form after
25 it had been completed showing the increase;

26 (2) Notice was given as provided in section three-a of
27 this article; or

28 (3) The person so assessed executing acknowledgment of
29 the notice of the increase.

§11-3-24. Review and equalization by county commission.

1 The county commission shall annually, not later than the

2 first day of February, meet for the purpose of reviewing and
3 equalizing the assessment made by the assessor. It shall not
4 adjourn for longer than three days at a time until this work
5 is completed, and shall not remain in session for a longer
6 period than twenty-eight days and shall not adjourn sine die
7 before the fifteenth day of February. At the first meeting,
8 the assessor shall submit the property books for the current
9 year, which shall be complete in every particular, except
10 that the levies shall not be extended. The assessor and his
11 assistants shall attend and render every assistance possible
12 in connection with the value of property assessed by them.
13 The commission shall proceed to examine and review the prop-
14 erty books, and shall add on the books the names of persons,
15 the value of personal property and the description and value of
16 real estate liable to assessment which was omitted by the
17 assessor. They shall correct all errors in the names of
18 persons, in the description and valuation of property, and
19 they shall cause to be done whatever else may be necessary
20 to make the valuation comply with the provisions of this
21 chapter. But in no case shall any question of classification
22 or taxability be considered or reviewed. If the commission
23 determine that any property or interest is assessed at more
24 or less than its true and actual value, it shall fix it at the true
25 and actual value. But no assessment shall be increased without
26 giving the property owner at least five days' notice, in writing,
27 and signed by the president of the commission, of the inten-
28 tion to make the increase. Service upon the property owner
29 shall be sufficient, or upon his agent or attorney in person,
30 or if sent by registered mail to such property owner, his agent,
31 or attorney, at the last known place of abode. If he be not
32 found and have no known place of abode, then notice shall be
33 given by publication thereof as a Class I legal advertisement
34 in compliance with the provisions of article three, chapter
35 fifty-nine of this code, and the publication area for such
36 publication shall be the county. The date of the publication
37 shall be at least five days prior to the increase. When it is
38 desired to increase the entire valuation in any one district by
39 a general increase, notice shall be given by publication thereof
40 as a Class II-O legal advertisement in compliance with the pro-
41 visions of article three, chapter fifty-nine of this code, and the

42 publication area for such publication shall be the county. The
43 date of the last publication shall be at least five days prior to
44 the increase in valuation. When an increase is made, the same
45 valuation shall not again be changed unless notice is again
46 given as heretofore provided.

47 The clerk of the county commission shall publish notice of
48 the time, place and general purpose of the meeting as a Class
49 II legal advertisement in compliance with the provisions of
50 article three, chapter fifty-nine of this code, and the publica-
51 tion area for such publication shall be the county involved.
52 The expense of publication shall be paid out of the county
53 treasury.

54 If any person fails to apply for relief at this meeting, he
55 shall have waived his right to ask for correction in his assess-
56 ment list for the current year, and shall not thereafter be per-
57 mitted to question the correctness of his list as finally fixed
58 by the county commission, except on appeal to the circuit
59 court. After the county commission completes the review and
60 equalization of the property books, a majority of the com-
61 mission shall sign a statement that it is the completed assess-
62 ment of the county for the year; then the property books shall
63 be delivered to the assessor and the levies extended as pro-
64 vided by law.

CHAPTER 106

(Com. Sub. for H. B. 893—By Mr. Lewis)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections two, ten and eleven, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five of said chapter by adding thereto two new sections, designated sections eleven and twelve, all relating to the assessment of real property; providing that mobile home trailers used for residential purposes permanently affixed to the land and owned

by the owner of the land be entered on the landbooks of each county and shall be assessed as real property; providing that mobile homes used by the owner for residential purposes and located on land not owned by the owner of the mobile home shall be assessed on personal property books as Class II property; and providing that mobile homes situate upon property owned by a person other than the owner of the mobile home shall be classified as personal property.

Be it enacted by the Legislature of West Virginia:

That sections two, ten and eleven, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article five of said chapter be amended by adding thereto two new sections, designated sections eleven and twelve, to read as follows:

Article

4. Assessment of Real Property.

5. Assessment of Personal Property.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-2. Form of landbooks.

§11-4-10. Land and buildings assessed separately; town lots; back taxing of omitted buildings.

§11-4-11. New buildings.

§11-4-2. Form of landbooks.

1 The tax commissioner shall prescribe a form of landbook
2 and the information and itemization to be entered therein,
3 which shall include separate entries of:

4 (1) All real property owned, used and occupied by the
5 owner exclusively for residential purposes, including mobile
6 homes, permanently affixed to the land and owned by the
7 owner of the land; (2) all farms including land used for agri-
8 culture, horticulture and grazing occupied by the owner or
9 bona fide tenant; (3) all other real property; and, for each
10 entry there shall be shown; (4) the value of land, the value of
11 buildings and the aggregate value; (5) the character and
12 estate of the owners, the number of acres or lots and the
13 local description of the tracts or lots; (6) the amount of
14 taxes assessed against each tract or lot for all purposes.

§11-4-10. Land and buildings assessed separately; town lots; back taxing of omitted buildings.

1 Land and the buildings or structures erected thereon shall
2 be assessed separately and the value of each entered separately
3 in the landbooks. Land, except town lots, shall be valued by
4 the acre, and town lots shall be designated by the number of
5 the lot and the name of the street on which it fronts, pro-
6 vided the lots be numbered and the streets of the town desig-
7 nated by name. Every assessor shall, in each year, in arriving
8 at the value of the buildings, including mobile homes used for
9 residential purposes permanently affixed to the land and owned
10 by the owner of the land, take into account any improvements
11 or changes affecting the value of such buildings. If the assessor
12 shall discover any building which has been omitted from the
13 landbook for any previous years, he may back tax the same
14 in the same manner and to the same extent as in the case of
15 personal property.

§11-4-11. New buildings.

1 No new building, mobile home used for residential purposes
2 permanently affixed to the land and owned by the owner of
3 the land, addition or improvement shall be assessed until it
4 is so far finished as to be fit for use, but the material in the
5 same shall be entered in the personal property books and
6 assessed as provided by this chapter.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-11. Mobile homes used by the owner for residential purposes and located on land not owned by the mobile homeowner.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

§11-5-11. Mobile homes used by the owner for residential purposes and located on land not owned by the mobile homeowner.

1 Mobile homes used and occupied by the owner thereof ex-
2 clusively for residential purposes and located on land not
3 owned by the owner of the mobile home shall be assessed on
4 the personal property books as Class II property.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

1 Mobile homes situate upon property owned by a person
2 other than the owner of the mobile home shall be classified
3 as personal property whether or not said mobile home is per-
4 manently affixed to the real estate and unless subject to assess-
5 ment as Class II property under section eleven of this article
6 or section two, article four of this chapter, shall be assessed
7 as Class III or Class IV personal property, as may be appro-
8 priate in the circumstances.

CHAPTER 107

(H. B. 1116—By Mr. Albright)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of certain terms used within the West Virginia tax procedure and administration act; and making the provisions of said act applicable to former officers and employees of the state.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, 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 10. PROCEDURE AND ADMINISTRATION.

§11-10-4. Definitions.

- 1 For the purpose of this article, the term:
- 2 (a) "Officer or employee of this state" shall include, but
- 3 shall not be limited to, any former officer or employee of the
- 4 state of West Virginia.

5 (b) "Person" shall include, but is not limited to, any indi-
6 vidual, firm, partnership, limited partnership, copartnership,
7 joint adventure, association, corporation, municipal corpora-
8 tion, organization, receiver, estate, trust, guardian, executor,
9 administrator, and also any officer, employee or member of
10 any of the foregoing who, as such officer, employee or mem-
11 ber, is under a duty to perform or is responsible for the per-
12 formance of an act prescribed by the provisions of this article
13 and the provisions of any of the other articles of this chapter
14 which impose taxes administered by the tax commissioner,
15 unless the intention to give a more limited or broader meaning
16 is disclosed by the context of this article or any of the other
17 articles of this chapter which impose taxes administered by the
18 tax commissioner.

19 (c) "State" means any state of the United States or the
20 District of Columbia.

21 (d) "Tax" or "taxes" includes within the meaning thereof
22 taxes specified in section three of this article, additions to tax,
23 penalties and interest, unless the intention to give the same a
24 more limited meaning is disclosed by the context.

25 (e) "Tax commissioner" or "commissioner" means the tax
26 commissioner of the state of West Virginia or his delegate.

27 (f) "Taxpayer" means any person required to file a return
28 for any tax administered under this article, or any person
29 liable for the payment of any tax administered under this
30 article.

31 (g) "Tax administered under this article" means any tax
32 to which this article applies as set forth in section three of
33 this article.

34 (h) "This code" means the code of West Virginia, one
35 thousand nine hundred thirty-one, as amended.

36 (i) "This state" means the state of West Virginia.

CHAPTER 108

(S. B. 122—By Mr. Brotherton, Mr. President)

[Passed March 9, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article fifteen by adding thereto a new section, designated section eleven; and to amend and reenact section three, article fifteen-a of said chapter, all relating to consumers sales tax; providing for a phased reduction and eventual exemption of the tax on food; specifying rates of tax on food for certain ensuing fiscal years; defining terms; excluding food sold by a food service establishment from definition of food; preserving the exemption from tax of sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling food for human consumption to consumers and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which would be subject to the tax except for the exemption of food; exempting sales of insulin to consumers for medical purposes; exempting sales to certain schools approved by the board of regents to award degrees; and exempting from the use tax tangible personal property the gross receipts from the sale of which are exempt from the retail sales tax.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article fifteen be further amended by adding thereto a new section, designated section eleven; and that section three, article fifteen-a of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.**Article****15. Consumers Sales and Service Tax.****15A. Use Tax.****ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

§11-15-9. Exemptions.

§11-15-11. Exemption of food intended for human consumption; transition reduction of tax; definitions and exceptions.

§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

2 (1) Sales of gasoline, taxable under article fourteen,
3 chapter eleven of the code, one thousand nine hundred
4 thirty-one;

5 (2) Sales of gas, steam and water delivered to con-
6 sumers through mains or pipes, and sales of electricity;

7 (3) Sales of textbooks required to be used in any of
8 the schools of this state;

9 (4) Sales of property or services to the state, its institu-
10 tions or subdivisions, and to the United States, including
11 agencies of federal, state or local governments for distribu-
12 tion in public welfare or relief work;

13 (5) Sales of motor vehicles which are titled by the
14 department of motor vehicles which are subject to the tax
15 imposed by section four, article three, chapter seventeen-a
16 of the code;

17 (6) Sales of property or services to churches and bona
18 fide charitable organizations who make no charge what-
19 ever for the services they render or sales of property or
20 services to corporations or organizations qualified under
21 section 501(c) (3) of the Internal Revenue Code of 1954,
22 as amended, or under section 501(c) (4) of the Internal
23 Revenue Code of 1954, as amended, who make casual and
24 occasional sales not conducted in a repeated manner or
25 in the ordinary course of repetitive and successive trans-
26 actions of like character, or sales of property or services
27 to persons engaged in this state in the business of con-

28 tracting, manufacturing, transportation, transmission,
29 communication, or in the production of natural resources:
30 *Provided, however,* That the exemption herein granted
31 shall apply only to services, machinery, supplies and ma-
32 terials directly used or consumed in the businesses or
33 organizations named above;

34 (7) An isolated transaction in which any tangible
35 personal property is sold, transferred, offered for sale, or
36 delivered by the owner thereof or by his representative
37 for the owner's account, such sale, transfer, offer for sale
38 or delivery not being made in the ordinary course of
39 repeated and successive transactions of like character by
40 such owner or on his account by such representative;

41 (8) Sales of tangible personal property and services
42 rendered for use or consumption in connection with the
43 conduct of the business of selling tangible personal prop-
44 erty to consumers or dispensing a service subject to tax
45 under this article or which would be subject to tax under
46 this article but for the exemption for food provided in
47 section eleven of this article and sales of tangible per-
48 sonal property and services rendered for use or con-
49 sumption in connection with the commercial production
50 of an agricultural product the ultimate sale of which will
51 be subject to the tax imposed by this article or which
52 would have been subject to tax under this article but
53 for the exemption for food provided in section eleven of
54 this article: *Provided,* That sales of tangible personal
55 property and services to be used or consumed in the con-
56 struction of or permanent improvement of real property
57 shall not be exempt;

58 (9) Sales of tangible personal property for the purpose
59 of resale in the form of tangible personal property;

60 (10) Sales of property or services to nationally char-
61 tered fraternal or social organizations for the sole purpose
62 of free distribution in public welfare or relief work;

63 (11) Sales and services, fire fighting, or station house
64 equipment, including construction and automotive, made

65 to any volunteer fire department organized and incor-
66 porated under the laws of the state of West Virginia;

67 (12) Sales of newspapers when delivered to consumers
68 by route carriers;

69 (13) Sales of drugs dispensed upon prescription and
70 sales of insulin to consumers for medical purposes;

71 (14) Sales of radio and television broadcasting time,
72 newspaper and outdoor advertising space for the adver-
73 tisement of goods or services;

74 (15) Sales and services performed by day care centers;

75 (16) Casual and occasional sales of property or services
76 not conducted in a repeated manner or in the ordinary
77 course of repetitive and successive transactions of like
78 character by corporations or organizations qualified
79 under section 501 (c) (3) of the Internal Revenue Code
80 of 1954, as amended, or under section 501 (c) (4) of the
81 Internal Revenue Code of 1954, as amended;

82 (17) Bank safety deposit boxes;

83 (18) Sales of property or services to a school which
84 has approval from the West Virginia board of regents to
85 award degrees, which has its principal campus in this
86 state, and which is exempt from federal and state income
87 taxes under section 501 (c) (3) of the Internal Revenue
88 Code of 1954, as amended.

**§11-15-11. Exemption of food intended for human consump-
tion; transition reduction of tax; definitions and
exceptions.**

1 (a) *Exemption.*—Sales of food intended for human
2 consumption made on or after the first day of July, one
3 thousand nine hundred eighty-one, shall be exempt from
4 the tax imposed by this article. This exemption shall be in
5 addition to any other exemption permitted under this
6 article.

7 (b) *Transition reduction of tax on July 1, 1979 and*
8 *July 1, 1980.*—The amount of tax imposed by section three

9 of this article on sales of food for human consumption
10 shall be reduced as follows:

11 (1) Sales of food intended for human consumption
12 made before the first day of July, one thousand nine
13 hundred seventy-nine, shall be taxed as provided in sec-
14 tion three of this article.

15 (2) Sales of food intended for human consumption
16 made after the thirtieth day of June, one thousand nine
17 hundred seventy-nine, shall be taxed as follows:

18 (A) There shall be no tax on sales where the monetary
19 consideration is twenty-five cents or less.

20 (B) On each sale, where the monetary consideration is
21 from twenty-six cents to fifty cents, both inclusive, one
22 cent.

23 (C) On each sale where the monetary consideration
24 is from fifty-one cents to one dollar, both inclusive, two
25 cents.

26 (D) On each fifty cents of monetary consideration or
27 fraction thereof in excess of one dollar, one cent.

28 (3) Sales of food intended for human consumption
29 made after the thirtieth day of June, one thousand nine
30 hundred eighty, but before the first day of July, one
31 thousand nine hundred eighty-one, shall be taxed as
32 follows:

33 (A) There shall be no tax on sales where the monetary
34 consideration is twenty-five cents or less.

35 (B) On each sale where the monetary consideration
36 is from twenty-six cents to one dollar, both inclusive, one
37 cent.

38 (C) On each one dollar or fraction thereof in excess
39 of one dollar, one cent. Separate sales such as daily or
40 weekly deliveries, shall not be aggregated for purpose of
41 computation of this tax even though such sales are ag-
42 gregated in the billing or the payment.

43 (c) *Definition of food.*—For purposes of this section,

44 and except as provided in subsection (d), the term "food"
45 shall mean and include all edible foodstuffs, beverages
46 containing no alcohol and items commonly thought of as
47 food, including, by way of illustration and not by limita-
48 tion, cereals and cereal products, meat and meat products,
49 fish and fish products, poultry and poultry products, fresh
50 and salt water animal products, eggs and egg products,
51 vegetables and vegetable products, fruit and fruit prod-
52 ucts, flour and flour products, sugar and sugar products,
53 milk and milk products, cocoa and cocoa products, coffee
54 and coffee substitutes, tea, herbs, spices, salt and salt sub-
55 stitutes, condiments, candy and confections, soft drinks,
56 soft drink mixes and syrups, tenderizers, food coloring,
57 bottled drinking water, sugar substitutes, oleomargarine,
58 shortening, gelatins, baking and cooking ingredients,
59 mushrooms, spreads, relishes, desserts, flavorings, chew-
60 ing gum, edible seeds, nuts and berries.

61 (d) The term "food" shall not include medicines, vita-
62 mins and dietary supplements whether in liquid, pow-
63 dered, granular, tablet, capsule, lozenge, or pill form;
64 spirituous, malt or vinous liquors or beer; ice; tobacco or
65 tobacco products; vending machine sales; or food sold by
66 a food-service establishment.

67 (e) *Definition of "food-service establishment."*—For
68 purposes of this section, and except as provided in sub-
69 section (f), the term "food-service establishment" means
70 any fixed or mobile restaurant, coffee shop, cafeteria,
71 short-order cafe, luncheonette, grill, tearoom, sandwich
72 shop, soda fountain, tavern, bar, cocktail lounge, night
73 club, industrial-feeding establishment, private, public or
74 nonprofit organization or institution routinely serving
75 food, catering operation, commissary or any other similar
76 place in which food or drink is prepared for sale or for
77 service on the premises or elsewhere; and any food-ser-
78 vice establishment which operates for a limited period of
79 time in connection with events such as, but not limited to,
80 a fair, carnival, circus, public exhibition, athletic event, or
81 similar gathering: *Provided*, That delicatessen, grocery,
82 market, dairy or bakery stores shall not be considered

83 food-service establishments within the meaning of this
84 section except for the sale of dinners, luncheons, barbe-
85 cued chicken other than barbecued chicken sold whole
86 and unsliced, sandwiches, snacks, hot pizzas, and other
87 similar items which are commonly sold at snack bars,
88 coffee shops or luncheon counters.

89 (f) The term "food-service establishment" shall not
90 include:

91 (1) Food sold by public or private schools, school
92 sponsored student organizations, or school sponsored par-
93 ent-teacher associations to students enrolled in such
94 school or to employees of such school during normal
95 school hours; but not those sales of food made to the
96 general public.

97 (2) Food sold by a public or private college or uni-
98 versity or by a student organization officially recognized
99 by such college or university to students enrolled at such
100 college or university when such sales are made on a
101 contract basis so that a fixed price is paid for consumption
102 of food products for a specific period of time without
103 respect to the amount of food product actually consumed
104 by the particular individual contracting for the sale and
105 no money is paid at the time the food product is served
106 or consumed.

107 (3) Food sold by a nonprofit organization or a gov-
108 ernmental agency under a program funded by a state or
109 the United States to low-income elderly persons at or
110 below cost.

111 (4) Food sold in an occasional sale by a charitable
112 or nonprofit organization, including volunteer fire de-
113 partments and rescue squads, if the purpose of the sale
114 is to obtain revenue for the functions and activities of the
115 organization and the revenue so obtained is actually ex-
116 pended for that purpose.

117 (5) Food sold by any religious organization at a social
118 or other gathering conducted by it or under its auspices,
119 if the purpose in selling the food is to obtain revenue for
120 the functions and activities of the organization and the

121 revenue obtained from selling the food is actually used in
122 carrying on such functions and activities. For the purpose
123 of this paragraph, "religious organizations" means any
124 organization the property of which is exempt from tax-
125 ation under article ten, section one of the West Virginia
126 Constitution.

ARTICLE 15A. USE TAX.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible per-
2 sonal property is hereby specifically exempted from
3 the tax imposed by this article:

4 (1) All articles of tangible personal property brought
5 into the state of West Virginia by a nonresident indi-
6 vidual thereof for his or her use or enjoyment while
7 within the state.

8 (2) Tangible personal property, the gross receipts from
9 the sale of which are exempted from the retail sales
10 tax by the terms of article fifteen, chapter eleven of
11 the code of West Virginia, one thousand nine hundred
12 thirty-one.

13 (3) Tangible personal property, the gross receipts from
14 the sale of which are derived from the sale of machinery,
15 supplies and materials to contractors, or to persons en-
16 gaged in the business of manufacturing, transportation,
17 transmission, communication or in the production of
18 natural resources in this state: *Provided*, That the exemp-
19 tions granted in this subdivision three are hereby sus-
20 pended, nullified and made inoperative during the period
21 from the first day of April, one thousand nine hundred
22 sixty-nine to midnight of the thirty-first day of March,
23 one thousand nine hundred seventy: *Provided further*,
24 That after midnight of the thirty-first day of March,
25 one thousand nine hundred seventy, the exemptions
26 granted in this subdivision three shall again be in full
27 force and effect as if they had not been suspended,
28 nullified and made inoperative as heretofore provided.

29 (4) Tangible personal property, the gross receipts or

30 the gross proceeds from the sale of which are required
31 to be included in the measure of the tax imposed by
32 article fifteen, chapter eleven of the code of West Vir-
33 ginia, one thousand nine hundred thirty-one.

34 (5) Tangible personal property, the sale of which in
35 this state is not subject to the West Virginia consumers
36 sales tax.

CHAPTER 109

(S. B. 428—By Mr. Fanning)

[Passed March 9, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-one and twenty-two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to consumers sales tax; requiring persons operating two or more places of business to file a schedule showing sales and tax collections for each place of business on an annual basis in lieu of filing such schedules monthly.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-21. Annual return; extension of time.

§11-15-22. Consolidated returns.

§11-15-21. Annual return; extension of time.

1 (a) *Date due.*—On or before thirty days after the end
2 of the tax year, each person liable for the payment of
3 any tax due under this article shall make and file an
4 annual return in such form as may be required by the
5 tax commissioner, showing:

6 (1) Total gross proceeds of his business for preceding
7 tax year,

8 (2) Gross proceeds upon which the tax for that year
9 was computed, and

10 (3) Any other information necessary in the computa-
11 tion or collection of the tax that the tax commissioner
12 may require.

13 (b) *Supporting schedule for consolidated return.*—
14 Whenever a person operates two or more places of busi-
15 ness and files a consolidated monthly return, a schedule
16 shall be attached to the consolidated annual return
17 showing, for each place of business, total sales and
18 charges for rendering services, total transactions subject
19 to tax and total tax collections.

20 (c) *Payment.*—After deducting the amount of prior
21 payments during the tax year, the taxpayer shall for-
22 ward the annual return along with payment of any re-
23 maining tax, due for the preceding tax year, to the tax
24 commissioner. The taxpayer or his duly authorized agent
25 shall verify the return under oath.

26 (d) *Extension of time.*—The tax commissioner for
27 good cause shown, may, on written application of a
28 taxpayer, extend the time for making any return re-
29 quired by the provisions of this article.

§11-15-22. Consolidated returns.

1 A person operating two or more places of business of
2 like character from which are made or dispensed sales
3 or services which are taxable hereunder shall file con-
4 solidated returns covering all such sales or services.

CHAPTER 110

(H. B. 1295—By Mr. Polan and Mr. Teets)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said article nineteen by adding

thereto a new section, designated section five-a, relating to soft drinks tax and eliminating the requirement that persons manufacturing, bottling, importing, distributing or selling soft drinks obtain a soft drinks permit; requiring persons subject to the soft drinks tax to file monthly reports and additional reports required by the commissioner; and permitting extension of time for filing such reports.

Be it enacted by the Legislature of West Virginia:

That section three, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said article nineteen be amended by adding thereto a new section, designated section five-a, to read as follows:

ARTICLE 19. SOFT DRINKS TAX.

§11-19-5a. Due date of reports; additional reports; extension of time.

1 Every person subject to the tax imposed by this article
2 shall on or before the fifteenth day of each month make and
3 file with the commissioner a report of such person's operations
4 for the preceding month to verify liability for tax under this
5 article. This report shall be in a form prescribed by the tax
6 commissioner.

7 The commissioner may by fifteen days written notice require
8 the filing of such additional reports as he deems necessary
9 to verify a person's liability under this article.

10 Upon written application setting forth good cause, the
11 commissioner may extend the time for filing such reports or
12 additional reports on such terms and conditions as he may
13 require.

CHAPTER 111

(H. B. 1047—By Mr. Speaker, Mr. See)

[Passed March 6, 1979; in effect from passage. Approved by the Governor.]

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

nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 Any term used in this article shall have the same meaning
2 as when used in a comparable context in the laws of the
3 United States relating to income taxes, unless a different
4 meaning is clearly required. Any reference in this article to
5 the laws of the United States shall mean the provisions of
6 the Internal Revenue Code of 1954, as amended, and such
7 other provisions of the laws of the United States as relate
8 to the determination of income for federal income tax pur-
9 poses. All amendments made to the laws of the United States
10 prior to the first day of January, one thousand nine hundred
11 seventy-nine, shall be given effect in determining the taxes
12 imposed by this article for the tax period beginning the first
13 day of January, one thousand nine hundred seventy-nine,
14 and thereafter, but no amendment to the laws of the United
15 States made on or after the first day of January, one thousand
16 nine hundred seventy-nine, shall be given effect.

CHAPTER 112

(H. B. 1046—By Mr. Speaker, Mr. See)

[Passed February 20, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms.

1 (a) *General.*—Any term used in this article shall have
2 the same meaning as when used in a comparable context in
3 the laws of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the context
5 or by definition in this article. Any reference in this article
6 to the laws of the United States or to the Internal Revenue
7 Code or to the federal income tax law shall mean the
8 provisions of the laws of the United States as relate to the
9 determination of income for federal income tax purposes.
10 All amendments made to the laws of the United States prior
11 to the first day of January, one thousand nine hundred
12 seventy-nine, shall be given effect in determining the taxes
13 imposed by this article for the tax period beginning the first
14 day of January, one thousand nine hundred seventy-nine,
15 and thereafter, but no amendment to laws of the United
16 States made on or after the first day of January, one thousand
17 nine hundred seventy-nine, shall be given effect.

18 (b) *Certain terms defined.*—For purposes of this article:

19 (1) The term “tax commissioner” means the tax commis-
20 sioner of the state of West Virginia or his delegate.

21 (2) The term “corporation” means and includes a joint-
22 stock company or any association which is taxable as a
23 corporation under the federal income tax law.

24 (3) The term “domestic corporation” means any corpora-
25 tion organized under the laws of West Virginia.

26 (4) The term “foreign corporation” means any corporation
27 other than a domestic corporation.

28 (5) The term “state” means any state of the United States,
29 the District of Columbia, the Commonwealth of Puerto Rico,

30 any territory or possession of the United States, and any
31 foreign country or political subdivision thereof.

32 (6) The term "taxable year" means the taxable year for
33 which the taxable income of the taxpayer is computed under
34 the federal income tax law.

35 (7) The term "taxpayer" means a corporation subject to
36 the tax imposed by this article.

37 (8) The term "tax" includes, within its meaning, interest
38 and penalties unless the intention to give it a more limited
39 meaning is disclosed by the context.

40 (9) The term "commercial domicile" means the principal
41 place from which the trade or business of the taxpayer is
42 directed or managed.

43 (10) The term "compensation" means wages, salaries,
44 commissions and any form of remuneration paid to employees
45 for personal services.

46 (11) The term "West Virginia taxable income" means the
47 taxable income of a corporation as defined by the laws of
48 the United States for federal income tax purposes, adjusted
49 as provided in section six: *Provided*, That in the case of a
50 corporation having income from business activity which is
51 taxable without this state, its "West Virginia taxable income"
52 shall be such portion of its taxable income as so defined and
53 adjusted as is allocated or apportioned to this state under the
54 provisions of section seven.

55 (12) The term "business income" means income arising
56 from transactions and activity in the regular course of the
57 taxpayer's trade or business and includes income from tangible
58 and intangible property if the acquisition and disposition of
59 the property constitute integral parts of the taxpayer's regular
60 trade or business operations.

61 (13) The term "nonbusiness income" means all income
62 other than business income.

63 (14) The term "public utility" means any business activity
64 to which the jurisdiction of the public service commission
65 of West Virginia extends under section one, article two,
66 chapter twenty-four of the code of West Virginia.

- 67 (15) The term "this code" means the code of West Virginia,
68 one thousand nine hundred thirty-one, as amended.
- 69 (16) The term "this state" means the state of West Virginia.

CHAPTER 113

(S. B. 195—By Mr. Jones and Mr. Moreland)

[Passed March 9, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-a, article three, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the time in which a purchaser of nonexistent or erroneously listed land may obtain a refund of the purchase price.

Be it enacted by the Legislature of West Virginia:

That section twenty-a, article three, chapter eleven-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. SALE OF LAND FOR TAXES.

§11A-3-20a. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

1 If, after payment of the amount bid at a sheriff's sale
2 and upon the examination of title, as required by section
3 twenty of this article, the purchaser shall discover that
4 the property purchased at such sale is the subject of an
5 erroneous assessment or is otherwise nonexistent, such
6 purchaser may submit the certificate of an attorney at law
7 that the property is the subject of an erroneous assess-
8 ment or is otherwise nonexistent, whereupon the sheriff
9 shall cause the moneys so paid to be refunded: *Provided,*
10 That the certificate shall be submitted by the first day of
11 January of the second year following the sale. Upon re-
12 fund, the sheriff shall inform the assessor of the errone-

13 ous assessment for the purpose of having the assessor
 14 correct said error.

CHAPTER 114

(Com. Sub. for H. B. 721—By Mr. Harman)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and three, article five of said chapter; and to amend article one of said chapter by adding thereto three new sections, designated sections sixty, sixty-one and sixty-two, relating to definitions; broadening the jurisdiction of department of public safety as to traffic regulations and laws of the road; making negligent homicide an offense anywhere it occurs in the state; making reckless driving an offense in certain designated areas of the state; and penalties.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and three, article five of said chapter be amended and reenacted; and that article one of said chapter be amended by adding thereto three new sections, designated sections sixty, sixty-one and sixty-two, all to read as follows:

Article

1. **Words and Phrases Defined.**
2. **Obedience to and Effect of Traffic Laws.**
5. **Serious Traffic Offenses.**

ARTICLE 1. WORDS AND PHRASES DEFINED.

- §17C-1-60. Parking area.
 §17C-1-61. Institution of higher education.
 §17C-1-62. Residential street.

§17C-1-60. Parking area.

- 1 "Parking area" means lots, areas or other accommodations
- 2 for the parking of vehicles off the street or highway and open
- 3 to public use with or without charge.

§17C-1-61. Institution of higher education.

1 The term "institution of higher education" shall mean "state
2 colleges," "state college," "state universities" and "univer-
3 sities," "state university," and "university," and "community
4 college" as defined in subsections (b), (c), (d), (e) and (f),
5 section two, article twenty-six, chapter eighteen of this code
6 and any other institution as defined by sections 401 (f), (g),
7 (h) of the Federal Higher Education Facilities Act of 1963,
8 as amended.

§17C-1-62. Residential street.

1 "Residential street" means the entire width between the
2 boundary lines of every way, whether publicly or privately
3 maintained, located within any subdivision, development or
4 other similar area used primarily for residential purposes
5 when any part thereof is open to the common use of those
6 living in said area for the purpose of vehicular travel.

ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS.**§17C-2-3. Enforcement of chapter; designation and bond of special officers; failure to obey police officer.**

1 (a) It shall be the duty of the department of public safety
2 and its members to enforce the provisions of this chapter and
3 other laws of this state governing the operation of vehicles
4 upon the streets and highways of this state as defined in sec-
5 tion one, article two, chapter seventeen-b of this code or in
6 other designated places specifically referred to in a given
7 section in this chapter; and it shall be the duty of sheriffs and
8 their deputies and of the police of cities and towns to render
9 to the department of public safety such assistance in the per-
10 formance of said duties as the superintendent of the department
11 of public safety may require of them.

12 (b) The West Virginia commissioner of highways is autho-
13 rized to designate employees of the West Virginia department
14 of highways as special officers to enforce the provisions of
15 this chapter only when such special officers are directing
16 traffic upon bridges and the approaches to bridges which are
17 a part of the state road system when any such bridge needs
18 special traffic direction and the superintendent of the depart-
19 ment of public safety has informed the West Virginia commis-

20 sioner of highways that he is unable to furnish personnel for
21 such traffic direction. The West Virginia commissioner of
22 highways shall provide a blanket bond in the amount of five
23 thousand dollars for any such employee so designated, and
24 for all employees designated as members of official West
25 Virginia department of highways weighing crews.

26 (c) No person shall willfully fail or refuse to comply with
27 any lawful order or direction of any police officer invested by
28 law with authority to direct, control or regulate traffic.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-1. Negligent homicide; penalties.

§17C-5-3. Reckless driving; penalties.

§17C-5-1. Negligent homicide; penalties.

1 (a) When the death of any person ensues within one year
2 as a proximate result of injury received by the driving of
3 any vehicle anywhere in this state in reckless disregard of
4 the safety of others, the person so operating such vehicle
5 shall be guilty of negligent homicide.

6 (b) Any person convicted of negligent homicide shall be
7 punished by imprisonment for not more than one year or by
8 fine of not less than one hundred dollars nor more than one
9 thousand dollars, or by both such fine and imprisonment.

10 (c) The commissioner shall revoke the license or permit
11 to drive and any nonresident operating privilege of any
12 person convicted of negligent homicide.

§17C-5-3. Reckless driving; penalties.

1 (a) Any person who drives any vehicle upon any street
2 or highway, or upon any residential street, or in any parking
3 area, or upon the ways of any institution of higher education,
4 whether public or private, or upon the ways of any state
5 institution, or upon the property of any county boards of
6 education, or upon any property within the state park and
7 public recreation system established by the director of the
8 department of natural resources pursuant to section three,
9 article four, chapter twenty of this code in willful or wanton
10 disregard for the safety of persons or property is guilty of
11 reckless driving.

12 (b) The provisions of subsection (a) of this section
13 shall not apply to those areas which have been temporarily
14 closed for racing sport events or which may be set aside by
15 the director of the department of natural resources within the
16 state park and recreation system for exclusive use by motor-
17 cycles or other recreational vehicles.

18 (c) Every person convicted of reckless driving may be
19 punished upon a first conviction by imprisonment for a
20 period of not less than five days nor more than ninety days,
21 or by a fine of not less than twenty-five dollars nor more
22 than five hundred dollars, or by both such fine and imprison-
23 ment, and on a second or subsequent conviction may be pun-
24 ished by imprisonment for not less than ten days nor more than
25 six months, or by a fine of not less than fifty dollars nor more
26 than one thousand dollars, or by both such fine and imprison-
27 ment.

CHAPTER 115

(Com. Sub. for H. B. 1286—By Mr. Chambers and Mr. Holmes)

[Passed March 10, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and ten, article six, and section five-a, article nine, all of said chapter, all relating to unemployment compensation; definitions; excluding certain employees from the terms totally or partially unemployed as they relate to vacation pay; requiring that to qualify for benefits an unemployed individual do that which a reasonably prudent person in his circumstances would do in seeking work; requiring that to qualify for benefits an unemployed individual earn wages in more than one quarter; changing the maximum benefit to an amount equal to twenty-eight times the weekly benefit rate; changing the maximum weekly benefit rate to seventy percent of the average weekly wage in West Virginia; and increasing the allowable expenditure

from the employment security special administration fund to five hundred thousand dollars in any fiscal year where those expenditures are to cover federal funds authorized but not yet received and subject to repayment to the fund.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one and ten, article six, and section five-a, article nine of said chapter, be amended and reenacted to read as follows:

Article

1. **Department of Employment Security.**
6. **Employee Eligibility; Benefits.**
9. **Employment Security Administration Fund.**

ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.

§21A-1-3. Definitions.

- 1 As used in this chapter, unless the context clearly requires
- 2 otherwise:
- 3 "Administration fund" means the employment security ad-
- 4 ministration fund, from which the administrative expenses
- 5 under this chapter shall be paid.
- 6 "Annual payroll" means the total amount of wages for
- 7 employment paid by an employer during a twelve-month
- 8 period ending with June thirty of any calendar year.
- 9 "Average annual payroll" means the average of the last
- 10 three annual payrolls of an employer.
- 11 "Base period" means the first four out of the last five
- 12 completed calendar quarters immediately preceding the first
- 13 day of the individual's benefit year.
- 14 "Base period employer" means any employer who in the
- 15 base period for any benefit year paid wages to an individual
- 16 who filed claim for unemployment compensation within such
- 17 benefit year.
- 18 "Base period wages" means wages paid to an individual
- 19 during the base period by all his base period employers.

20 "Benefit year" with respect to an individual means the
21 fifty-two week period beginning with the first day of the
22 calendar week in which a valid claim is effective and there-
23 after the fifty-two week period beginning with the first day
24 of the calendar week in which such individual next files a
25 valid claim for benefits after the termination of his last
26 preceding benefit year. An initial claim for benefits filed
27 in accordance with the provisions of this chapter shall be
28 deemed to be a valid claim within the purposes of this
29 definition if the individual has been paid wages in his base
30 period sufficient to make him eligible for benefits under the
31 provisions of this chapter.

32 "Benefits" means the money payable to an individual with
33 respect to his unemployment.

34 "Board" means board of review.

35 "Calendar quarter" means the period of three consecutive
36 calendar months ending on March thirty-one, June thirty,
37 September thirty or December thirty-one, or the equivalent
38 thereof as the commissioner may by regulation prescribe.

39 "Commissioner" means the employment security commis-
40 sioner.

41 "Computation date" means June thirty of the year im-
42 mediately preceding the January one on which an employer's
43 contribution rate becomes effective.

44 "Employing unit" means an individual, or type of organi-
45 zation, including any partnership, association, trust, estate,
46 joint-stock company, insurance company, corporation (do-
47 mestic or foreign), state or political subdivision thereof,
48 or their instrumentalities, as provided in subdivision (9) (b)
49 of the definition of "employment" in this section, institution
50 of higher education, or the receiver, trustee in bankruptcy,
51 trustee or successor thereof, or the legal representative of
52 a deceased person, which has on January first, one thousand
53 nine hundred thirty-five, or subsequent thereto, had in its
54 employ one or more individuals performing service within
55 this state.

56 "Employer" means:

57 (1) Until January one, one thousand nine hundred seventy-
58 two, any employing unit which for some portion of a day,
59 not necessarily simultaneously, in each of twenty different
60 calendar weeks, which weeks need not be consecutive, within
61 either the current calendar year, or the preceding calendar
62 year, has had in employment four or more individuals irres-
63 pective of whether the same individuals were or were not
64 employed on each of such days;

65 (2) Any employing unit which is or becomes a liable
66 employer under any federal unemployment tax act;

67 (3) Any employing unit which has acquired or acquires
68 the organization, trade or business, or substantially all the
69 assets thereof, of an employing unit which at the time of
70 such acquisition was an employer subject to this chapter;

71 (4) Any employing unit which, after December thirty-
72 one, one thousand nine hundred sixty-three, and until
73 January one, one thousand nine hundred seventy-two, in
74 any one calendar quarter, in any calendar year, has in
75 employment four or more individuals and has paid wages for
76 employment in the total sum of five thousand dollars or more,
77 or which, after such date, has paid wages for employment in
78 any calendar year in the sum total of twenty thousand dollars
79 or more;

80 (5) Any employing unit which, after December thirty-one,
81 one thousand nine hundred sixty-three, and until January
82 one, one thousand nine hundred seventy-two, in any three-
83 week period, in any calendar year, has in employment ten or
84 more individuals;

85 (6) For the effective period of its election pursuant to
86 section three, article five of this chapter, any employing
87 unit which has elected to become subject to this chapter;

88 (7) Any employing unit which, after December thirty-
89 one, one thousand nine hundred seventy-one (i) in any calendar
90 quarter in either the current or preceding calendar year paid
91 for service in employment wages of one thousand five hundred

92 dollars or more, or (ii) for some portion of a day in each of
93 twenty different calendar weeks, whether or not such weeks
94 were consecutive, in either the current or the preceding
95 calendar year had in employment at least one individual (ir-
96 respective of whether the same individual was in employment
97 in each such day) except as provided in subdivisions eleven
98 and twelve hereof;

99 (8) Any employing unit for which service in employment,
100 as defined in subdivision (9) of the definition of "em-
101 ployment" in this section, is performed after December
102 thirty-one, one thousand nine hundred seventy-one;

103 (9) Any employing unit for which service in employment,
104 as defined in subdivision (10) of the definition of "employ-
105 ment" in this section, is performed after December thirty-one,
106 one thousand nine hundred seventy-one;

107 (10) Any employing unit for which service in employment,
108 as defined in paragraphs (b) and (c) of subdivision (9) of
109 the definition of "employment" in this section, is performed
110 after December thirty-one, one thousand nine hundred seventy-
111 seven;

112 (11) Any employing unit for which agricultural labor,
113 as defined in subdivision (12) of the definition of "employ-
114 ment" in this section, is performed after December thirty-one,
115 one thousand nine hundred seventy-seven;

116 (12) Any employing unit for which domestic service in
117 employment, as defined in subdivision (13) of the definition
118 of "employment" in this section, is performed after December
119 thirty-one, one thousand nine hundred seventy-seven.

120 "Employment," subject to the other provisions of this
121 section, means:

122 (1) Service, including service in interstate commerce,
123 performed for wages or under any contract of hire, written
124 or oral, express or implied;

125 (2) Any service performed prior to January one, one
126 thousand nine hundred seventy-two, which was employment as
127 defined in this section prior to such date and, subject to

128 the other provisions of this section, service performed
129 after December thirty-one, one thousand nine hundred
130 seventy-one, by an employee, as defined in section 3306(i)
131 of the Federal Unemployment Tax Act, including service in
132 interstate commerce;

133 (3) Any service performed prior to January one, one
134 thousand nine hundred seventy-two, which was employment
135 as defined in this section prior to such date and, subject to
136 the other provisions of this section, service performed
137 after December thirty-one, one thousand nine hundred seventy-
138 one, including service in interstate commerce, by any officer
139 of a corporation;

140 (4) An individual's entire service, performed within or
141 both within and without this state if: (a) The service is
142 localized in this state; or (b) the service is not localized
143 in any state but some of the service is performed in this
144 state and (i) the base of operations, or, if there is no base
145 of operations, then the place from which such service is
146 directed or controlled, is in this state; or (ii) the base
147 of operations or place from which such service is directed
148 or controlled is not in any state in which some part of
149 the service is performed but the individual's residence is in
150 this state;

151 (5) Service not covered under paragraph four of this
152 subdivision and performed entirely without this state with
153 respect to no part of which contributions are required and
154 paid under an unemployment compensation law of any other
155 state or of the federal government, shall be deemed to be
156 employment subject to this chapter if the individual per-
157 forming such services is a resident of this state and the
158 commissioner approves the election of the employing unit
159 for whom such services are performed that the entire service
160 of such individual shall be deemed to be employment subject
161 to this chapter;

162 (6) Service shall be deemed to be localized within a state,
163 if: (a) The service is performed entirely within such state; or
164 (b) the service is performed both within and without such
165 state, but the service performed without such state is incidental

166 to the individual's service within this state, as, for example,
167 is temporary or transitory in nature or consists of isolated trans-
168 actions;

169 (7) Services performed by an individual for wages shall
170 be deemed to be employment subject to this chapter unless
171 and until it is shown to the satisfaction of the commissioner
172 that: (a) Such individual has been and will continue to be
173 free from control or direction over the performance of such
174 services, both under his contract of service and in fact; and
175 (b) such service is either outside the usual course of the
176 business for which such service is performed or that such
177 service is performed outside of all the places of business of
178 the enterprise for which such service is performed; and
179 (c) such individual is customarily engaged in an independently
180 established trade, occupation, profession or business;

181 (8) All service performed by an officer or member of the
182 crew of an American vessel (as defined in section three hun-
183 dred five of an act of Congress entitled Social Security Act
184 amendment of 1946, approved August tenth, one thousand
185 nine hundred forty-six) on or in connection with such vessel,
186 provided that the operating office, from which the operations
187 of such vessel operating on navigable waters within and
188 without the United States is ordinarily and regularly super-
189 vised, managed, directed and controlled, is within this state;

190 (9) (a) Service performed after December thirty-one, one
191 thousand nine hundred seventy-one, by an individual in the
192 employ of this state or any of its instrumentalities (or in
193 the employ of this state and one or more other states or
194 their instrumentalities) for a hospital or institution of higher
195 education located in this state: *Provided*, That such service
196 is excluded from "employment" as defined in the Federal
197 Unemployment Tax Act solely by reason of section 3306
198 (c) (7) of that act and is not excluded from "employment"
199 under subdivision (11) of the exclusion from employment;

200 (b) Service performed after December thirty-one, one thou-
201 sand nine hundred seventy-seven, in the employ of this state
202 or any of its instrumentalities or political subdivision thereof
203 or any of its instrumentalities or any instrumentality of more

204 than one of the foregoing or any instrumentality of any fore-
205 going and one or more other states or political subdivisions:
206 *Provided*, That such service is excluded from "employment"
207 as defined in the Federal Unemployment Tax Act by section
208 3306(c) (7) of that act and is not excluded from "employment"
209 under subdivision (15) of the exclusion from employment in
210 this section; and

211 (c) Service performed after December thirty-one, one thou-
212 sand nine hundred seventy-seven, in the employ of a non-
213 profit educational institution which is not an institution of
214 higher education;

215 (10) Service performed after December thirty-one, one
216 thousand nine hundred seventy-one, by an individual in the
217 employ of a religious, charitable, educational or other organi-
218 zation but only if the following conditions are met:

219 (a) The service is excluded from "employment" as de-
220 fined in the Federal Unemployment Tax Act solely by reason
221 of section 3306 (c) (8) of that act; and

222 (b) The organization had four or more individuals in em-
223 ployment for some portion of a day in each of twenty differ-
224 ent weeks, whether or not such weeks were consecutive, with-
225 in either the current or preceding calendar year, regardless of
226 whether they were employed at the same moment of time;

227 (11) Service of an individual who is a citizen of the United
228 States, performed outside the United States after Decem-
229 ber thirty-one, one thousand nine hundred seventy-one (ex-
230 cept in Canada and in the case of Virgin Islands after Dec-
231 ember thirty-one, one thousand nine hundred seventy-one,
232 and before January one of the year following the year in
233 which the secretary of labor approves for the first time
234 an unemployment insurance law submitted to him by the
235 Virgin Islands for approval) in the employ of an Ameri-
236 can employer (other than service which is deemed "em-
237 ployment" under the provisions of subdivision (4), (5) or
238 (6) of this definition of "employment" or the parallel pro-
239 visions of another state's law) if:

240 (a) The employer's principal place of business in the
241 United States is located in this state; or

242 (b) The employer has no place of business in the Uni-
243 ted States, but (i) the employer is an individual who is a
244 resident of this state; or (ii) the employer is a corporation
245 which is organized under the laws of this state; or (iii) the
246 employer is a partnership or a trust and the number of the
247 partners or trustees who are residents of this state is greater
248 than the number who are residents of any one other state;
249 or

250 (c) None of the criteria of subparagraphs (a) and (b) of this
251 subdivision (11) is met but the employer has elected coverage
252 in this state or, the employer having failed to elect coverage
253 in any state, the individual has filed a claim for benefits,
254 based on such service, under the law of this state.

255 An "American employer," for purposes of this subdivision
256 (11), means a person who is (i) an individual who is a
257 resident of the United States; or (ii) a partnership if
258 two-thirds or more of the partners are residents of
259 the United States; or (iii) a trust, if all of the trustees
260 are residents of the United States; or (iv) a corpora-
261 tion organized under the laws of the United States or of any
262 state;

263 (12) Service performed after December thirty-one, one
264 thousand nine hundred seventy-seven, by an individual in
265 agricultural labor as defined in subdivision (5) of the exclu-
266 sions from employment in this section when:

267 (a) Such service is performed for a person who (i) dur-
268 ing any calendar quarter in either the current or the pre-
269 ceding calendar year paid remuneration in cash of twenty
270 thousand dollars or more to individuals employed in agricul-
271 tural labor [not taking into account service in agricultural
272 labor performed before January one, one thousand nine
273 hundred eighty, by an alien referred to in subparagraph (b)
274 of this subdivision (12)], or (ii) for some portion of a day
275 in each of twenty different calendar weeks, whether or not
276 such weeks were consecutive, in either the current or the
277 preceding calendar year, employed in agricultural labor (not
278 taking into account service in agricultural labor performed
279 before January one, one thousand nine hundred eighty, by an

280 alien referred to in division (ii) of this subparagraph) ten
281 or more individuals, regardless of whether they were employed
282 at the same moment of time;

283 (b) Such service is not performed in agricultural labor
284 if performed before January one, one thousand nine hundred
285 eighty, by an individual who is an alien admitted to the
286 United States to perform service in agricultural labor pur-
287 suant to sections 214(c) and 101(a) (15)(H) of the Immi-
288 gration and Nationality Act;

289 (c) For the purposes of the definition of employment,
290 any individual who is a member of a crew furnished by a
291 crew leader to perform service in agricultural labor for
292 any other person shall be treated as an employee of such
293 crew leader (i) if such crew leader holds a valid certificate
294 of registration under the Farm Labor Contractor Registration
295 Act of 1963; or substantially all the members of such crew
296 operate or maintain tractors, mechanized harvesting or crop-
297 dusting equipment, or any other mechanized equipment, which
298 is provided by such crew leader; and (ii) if such individual
299 is not an employee of such other person within the meaning
300 of subdivision (7) of the definition of employer;

301 (d) For the purposes of this subdivision (12), in the
302 case of any individual who is furnished by a crew leader
303 to perform service in agricultural labor for any other person
304 and who is not treated as an employee of such crew leader
305 under subparagraph (c) of this subdivision (12), (i) such
306 other person and not the crew leader shall be treated as
307 the employer of such individual; and (ii) such other person
308 shall be treated as having paid cash remuneration to such
309 individual in an amount equal to the amount of cash re-
310 muneration paid to such individual by the crew leader
311 (either on his own behalf or on behalf of such other person)
312 for the service in agricultural labor performed for such other
313 person;

314 (e) For the purposes of this subdivision (12), the term
315 "crew leader" means an individual who (i) furnishes in-
316 dividuals to perform service in agricultural labor for any
317 other person, (ii) pays (either on his own behalf or on

318 behalf of such other person) the individuals so furnished
319 by him for the service in agricultural labor performed
320 by them, and (iii) has not entered into a written agreement
321 with such other person under which such individual is desig-
322 nated as an employee of such other person;

323 (13) The term "employment" shall include domestic service
324 after December thirty-one, one thousand nine hundred seventy-
325 seven, in a private home, local college club or local chapter
326 of a college fraternity or sorority performed for a person
327 who paid cash remuneration of one thousand dollars or
328 more after December thirty-one, one thousand nine hundred
329 seventy-seven, in any calendar quarter in the current calendar
330 year or the preceding calendar year to individuals employed
331 in such domestic service.

332 Notwithstanding the foregoing definition of "employ-
333 ment," if the services performed during one half or more
334 of any pay period by an employee for the person employ-
335 ing him constitute employment, all the services of such
336 employee for such period shall be deemed to be employment;
337 but if the services performed during more than one half
338 of any such pay period by an employee for the person em-
339 ploying him do not constitute employment, then none of the
340 services of such employee for such period shall be deemed
341 to be employment.

342 The term "employment" shall not include:

343 (1) Service performed in the employ of this state or
344 any political subdivision thereof, or any instrumentality of
345 this state or its subdivisions, except as otherwise provided
346 herein until December thirty-one, one thousand nine hundred
347 seventy-seven;

348 (2) Service performed directly in the employ of another
349 state, or its political subdivisions, except as otherwise pro-
350 vided in subdivision (9) (a) of the definition of "employ-
351 ment," until December thirty-one, one thousand nine hundred
352 seventy-seven;

353 (3) Service performed in the employ of the United States
354 or an instrumentality of the United States exempt under

355 the constitution of the United States from the payments
356 imposed by this law, except that to the extent that
357 the Congress of the United States shall permit states to
358 require any instrumentalities of the United States to make
359 payments into an unemployment fund under a state unem-
360 ployment compensation law, all of the provisions of this
361 law shall be applicable to such instrumentalities, and
362 to service performed for such instrumentalities, in the
363 same manner, to the same extent and on the same
364 terms as to all other employers, employing units, individuals
365 and services: *Provided*, That if this state shall not
366 be certified for any year by the secretary of labor under
367 section 1603(c) of the Federal Internal Revenue Code,
368 the payments required of such instrumentalities with
369 respect to such year shall be refunded by the commissioner
370 from the fund in the same manner and within the
371 same period as is provided in section nineteen, article
372 five of this chapter, with respect to payments erroneously
373 collected;

374 (4) Service performed after June thirty, one thousand
375 nine hundred thirty-nine, with respect to which unem-
376 ployment compensation is payable under the Railroad
377 Unemployment Insurance Act and service with respect to
378 which unemployment benefits are payable under an un-
379 employment compensation system for maritime employees
380 established by an act of Congress. The commissioner may
381 enter into agreements with the proper agency established
382 under such an act of Congress to provide reciprocal treat-
383 ment to individuals who, after acquiring potential rights
384 to unemployment compensation under an act of Con-
385 gress, or who have, after acquiring potential rights to
386 unemployment compensation under an act of Congress, ac-
387 quired rights to benefit under this chapter. Such agree-
388 ment shall become effective ten days after such publica-
389 tions which shall comply with the general rules of the
390 department;

391 (5) Service performed by an individual in agricultural
392 labor, except as provided in subdivision (12) of the defini-
393 tion of "employment" in this section. For purposes of

394 this subdivision (5), the term "agricultural labor" includes
395 all services performed:

396 (a) On a farm, in the employ of any person, in connec-
397 tion with cultivating the soil, or in connection with raising
398 or harvesting any agricultural or horticultural commodity,
399 including the raising, shearing, feeding, caring for, training,
400 and management of livestock, bees, poultry, and fur-bearing
401 animals and wildlife;

402 (b) In the employ of the owner or tenant or other
403 operator of a farm, in connection with the operation, man-
404 agement, conservation, improvement or maintenance of such
405 farm and its tools and equipment, or in salvaging timber
406 or clearing land of brush and other debris left by a
407 hurricane, if the major part of such service is performed on
408 a farm;

409 (c) In connection with the production or harvesting of
410 any commodity defined as an agricultural commodity in
411 section 15(g) of the Agricultural Marketing Act, as amended,
412 or in connection with the ginning of cotton, or in con-
413 nection with the operation or maintenance of ditches, canals,
414 reservoirs or waterways, not owned or operated for profit,
415 used exclusively for supplying and storing water for farming
416 purposes;

417 (d) (i) In the employ of the operator of a farm in
418 handling, planting, drying, packing, packaging, processing,
419 freezing, grading, storing or delivering to storage or to
420 market or to a carrier for transportation to market, in
421 its unmanufactured state, any agricultural or horticul-
422 tural commodity; but only if such operator produced
423 more than one half of the commodity with respect
424 to which such service is performed; or (ii) in the employ
425 of a group of operators of farms (or a cooperative organi-
426 zation of which such operators are members) in the per-
427 formance of service described in subparagraph (i), but
428 only if such operators produced more than one half of
429 the commodity with respect to which such service is per-
430 formed; but the provisions of subparagraphs (i) and (ii) shall
431 not be deemed to be applicable with respect to service

432 performed in connection with commercial canning or com-
433 mercial freezing or in connection with any agricultural or
434 horticultural commodity after its delivery to a terminal market
435 for distribution for consumption;

436 (e) On a farm operated for profit if such service is not
437 in the course of the employer's trade or business or is
438 domestic service in a private home of the employer. As
439 used in this subdivision (5), the term "farm" includes stock,
440 dairy, poultry, fruit, fur-bearing animals, and truck farms,
441 plantations, ranches, greenhouses, ranges and nurseries,
442 or other similar land areas or structures used primari-
443 ly for the raising of any agricultural or horticultural
444 commodities;

445 (6) Domestic service in a private home, except as pro-
446 vided in subdivision (13) of the definition of "employment"
447 in this section;

448 (7) Service performed by an individual in the employ of his
449 son, daughter or spouse;

450 (8) Service performed by a child under the age of eigh-
451 teen years in the employ of his father or mother;

452 (9) Service as an officer or member of a crew of an Ameri-
453 can vessel, performed on or in connection with such vessel,
454 if the operating office, from which the operations of the vessel
455 operating on navigable water within or without the United
456 States are ordinarily and regularly supervised, managed, direc-
457 ted and controlled, is without this state;

458 (10) Service performed by agents of mutual fund broker-
459 dealers or insurance companies, exclusive of industrial insur-
460 ance agents, or by agents of investment companies, who are
461 compensated wholly on a commission basis;

462 (11) Service performed (i) in the employ of a church or
463 convention or association of churches, or an organization
464 which is operated primarily for religious purposes and which
465 is operated, supervised, controlled or principally supported by
466 a church or convention or association of churches; or (ii) by a
467 duly ordained, commissioned or licensed minister of a church
468 in the exercise of his ministry or by a member of a religious

469 order in the exercise of duties required by such order; or
470 (iii) prior to January one, one thousand nine hundred seventy-
471 eight, in the employ of a school which is not an institution
472 of higher education; or (iv) in a facility conducted for the
473 purpose of carrying out a program of rehabilitation for indi-
474 viduals whose earning capacity is impaired by age or physical
475 or mental deficiency or injury or providing remunerative
476 work for individuals who because of their impaired physical
477 or mental capacity cannot be readily absorbed in the competi-
478 tive labor market by an individual receiving such rehabilitation
479 or remunerative work; or (v) as part of an unemployment work-
480 relief or work-training program assisted or financed in whole
481 or in part by any federal agency or an agency of a state or
482 political subdivision thereof, by an individual receiving such
483 work relief or work training; or (vi) prior to January one,
484 one thousand nine hundred seventy-eight, for a hospital in a
485 state prison or other state correctional institution by an in-
486 mate of the prison or correctional institution, and after De-
487 cember thirty-one, one thousand nine hundred seventy-seven,
488 by an inmate of a custodial or penal institution;

489 (12) Service performed in the employ of a school, college
490 or university, if such service is performed (i) by a student who
491 is enrolled and is regularly attending classes at such school,
492 college or university, or (ii) by the spouse of such a student, if
493 such spouse is advised, at the time such spouse commences to
494 perform such service, that (I) the employment of such spouse
495 to perform such service is provided under a program to pro-
496 vide financial assistance to such student by such school,
497 college or university, and (II) such employment will not be
498 covered by any program of unemployment insurance;

499 (13) Service performed by an individual under the age of
500 twenty-two who is enrolled at a nonprofit or public educational
501 institution which normally maintains a regular faculty and
502 curriculum and normally has a regularly organized body of
503 students in attendance at the place where its educational ac-
504 tivities are carried on as a student in a full-time program,
505 taken for credit at such institution, which combines academic
506 instruction with work experience, if such service is an integral
507 part of such program, and such institution has so certified

508 to the employer, except that this subdivision shall not apply
509 to service performed in a program established for or on be-
510 half of an employer or group of employers;

511 (14) Service performed in the employ of a hospital, if such
512 service is performed by a patient of the hospital, as defined in
513 this section;

514 (15) Service in the employ of a governmental entity re-
515 ferred to in subdivision (9) of the definition of "employment"
516 in this section if such service is performed by an individual in
517 the exercise of duties (i) as an elected official; (ii) as a mem-
518 ber of a legislative body, or a member of the judiciary, of a
519 state or political subdivision; (iii) as a member of the state
520 national guard or air national guard; (iv) as an employee
521 serving on a temporary basis in case of fire, storm, snow,
522 earthquake, flood or similar emergency; (v) in a position
523 which, under or pursuant to the laws of this state, is designated
524 as (I) a major nontenured policy-making or advisory position,
525 or (II) a policy-making or advisory position the performance
526 of the duties of which ordinarily does not require more than
527 eight hours per week.

528 Notwithstanding the foregoing exclusions from the definition
529 of "employment," services, except agricultural labor and do-
530 mestic service in a private home, shall be deemed to be in
531 employment if with respect to such services a tax is required
532 to be paid under any federal law imposing a tax against which
533 credit may be taken for contributions required to be paid into
534 a state unemployment compensation fund, or which as a
535 condition for full tax credit against the tax imposed by the
536 Federal Unemployment Tax Act are required to be covered
537 under this chapter.

538 "Employment office" means a free employment office or
539 branch thereof, operated by this state, or any free public
540 employment office maintained as a part of a state controlled
541 system of public employment offices in any other state.

542 "Fund" means the unemployment compensation fund estab-
543 lished by this chapter.

544 "Hospital" means an institution which has been licensed,

545 certified or approved by the state department of health as a
546 hospital.

547 "Institution of higher education" means an educational in-
548 stitution which:

549 (1) Admits as regular students only individuals having a
550 certificate of graduation from a high school, or the recognized
551 equivalent of such a certificate;

552 (2) Is legally authorized in this state to provide a pro-
553 gram of education beyond high school;

554 (3) Provides an educational program for which it awards
555 a bachelor's or higher degree, or provides a program which
556 is acceptable for full credit toward such a degree, or provides
557 a program of post-graduate or post-doctoral studies, or pro-
558 vides a program of training to prepare students for gainful
559 employment in a recognized occupation; and

560 (4) Is a public or other nonprofit institution.

561 Notwithstanding any of the foregoing provisions of this
562 definition, all colleges and universities in this state are insti-
563 tutions of higher education for purposes of this section.

564 "Payments" means the money required to be paid or that
565 may be voluntarily paid into the state unemployment compen-
566 sation fund as provided in article five of this chapter.

567 "Separated from employment" means, for the purposes of
568 this chapter, the total severance, whether by quitting, dis-
569 charge or otherwise, of the employer-employee relationship.

570 "State" includes, in addition to the states of the United
571 States, Puerto Rico, District of Columbia and the Virgin
572 Islands.

573 "Total and partial unemployment" means:

574 (1) An individual shall be deemed totally unemployed in
575 any week in which such individual is separated from employ-
576 ment for an employing unit and during which he performs no
577 services and with respect to which no wages are payable to him.

578 (2) An individual who has not been separated from em-

579 ployment shall be deemed to be partially unemployed in any
580 week in which due to lack of work he performs no services
581 and with respect to which no wages are payable to him, or
582 in any week in which due to lack of full time work wages
583 payable to him are less than his weekly benefit amount plus
584 twenty-five dollars.

585 "Wages" means all remuneration for personal service, in-
586 cluding commissions and bonuses and the cash value of all
587 remuneration in any medium other than cash except for
588 agricultural labor and domestic service: *Provided*, That the
589 term "wages" shall not include:

590 (1) That part of the remuneration which, after remu-
591 neration equal to three thousand dollars has been paid to
592 an individual by an employer with respect to employment
593 during any calendar year, is paid after December thirty-one,
594 one thousand nine hundred thirty-nine, and prior to January
595 one, one thousand nine hundred forty-seven, to such indi-
596 vidual by such employer with respect to employment during
597 such calendar year; or that part of the remuneration which,
598 after remuneration equal to three thousand dollars with
599 respect to employment after one thousand nine hundred
600 thirty-eight has been paid to an individual by an employer
601 during any calendar year after one thousand nine hundred
602 forty-six, is paid to such individual by such employer during
603 such calendar year, except that for the purposes of sections
604 one, ten, eleven and thirteen, article six of this chapter, all
605 remuneration earned by an individual in employment shall
606 be credited to the individual and included in his com-
607 putation of base period wages: *Provided*, That notwith-
608 standing the foregoing provisions, on and after January
609 one, one thousand nine hundred sixty-two, the term
610 "wages" shall not include:

611 That part of the remuneration which, after remuneration
612 equal to three thousand six hundred dollars has been paid to
613 an individual by an employer with respect to employment
614 during any calendar year, is paid during any calendar year
615 after one thousand nine hundred sixty-one; and shall not
616 include that part of remuneration which, after remuneration
617 equal to four thousand two hundred dollars is paid during a

618 calendar year after one thousand nine hundred seventy-one;
619 and shall not include that part of remuneration which, after
620 remuneration equal to six thousand dollars is paid during a
621 calendar year after one thousand nine hundred seventy-seven,
622 to an individual by an employer or his predecessor with respect
623 to employment during any calendar year, is paid to such
624 individual by such employer during such calendar year unless
625 that part of the remuneration is subject to a tax under a
626 federal law imposing a tax against which credit may be taken
627 for contributions required to be paid into a state unemploy-
628 ment fund. For the purposes of this subdivision (1), the
629 term employment shall include service constituting employ-
630 ment under any unemployment compensation law of another
631 state; or which as a condition for full tax credit against the
632 tax imposed by the Federal Unemployment Tax Act is required
633 to be covered under this chapter; and, except, that for the
634 purposes of sections one, ten, eleven and thirteen, article
635 six of this chapter, all remuneration earned by an individual
636 in employment shall be credited to the individual and included
637 in his computation of base period wages: *Provided, however,*
638 That the remuneration paid to an individual by an employer
639 with respect to employment in another state or other states
640 upon which contributions were required of and paid by such
641 employer under an unemployment compensation law of such
642 other state or states shall be included as a part of the remunera-
643 tion equal to the amounts of three thousand six hundred dollars
644 or four thousand two hundred dollars or six thousand dollars
645 herein referred to. In applying such limitation on the amount of
646 remuneration that is taxable, an employer shall be accorded
647 the benefit of all or any portion of such amount which may
648 have been paid by its predecessor or predecessors: *Provided*
649 *further,* That if the definition of the term "wages" as contained
650 in section 3306(b) of the Internal Revenue Code of 1954 as
651 amended: (a) Effective prior to January one, one thousand
652 nine hundred sixty-two, to include remuneration in excess of
653 three thousand dollars, or (b) effective on or after January one,
654 one thousand nine hundred sixty-two, to include remuneration
655 in excess of three thousand six hundred dollars, or effective
656 on or after January one, one thousand nine hundred seventy-
657 two, to include remuneration in excess of four thousand two

658 hundred dollars, or effective on or after January one, one
659 thousand nine hundred seventy-eight, to include remuneration
660 in excess of six thousand dollars, paid to an individual by an
661 employer under the Federal Unemployment Tax Act during any
662 calendar year, wages for the purposes of this definition shall
663 include remuneration paid in a calendar year to an individual
664 by an employer subject to this article or his predecessor with
665 respect to employment during any calendar year up to an
666 amount equal to the amount of remuneration taxable under
667 the Federal Unemployment Tax Act;

668 (2) The amount of any payment made after December
669 thirty-one, one thousand nine hundred fifty-two (including
670 any amount paid by an employer for insurance or annuities, or
671 into a fund, to provide for any such payment), to, or on be-
672 half of, an individual in its employ or any of his dependents,
673 under a plan or system established by an employer which
674 makes provision for individuals in its employ generally (or
675 for such individuals and their dependents), or for a class or
676 classes of such individuals (or for a class or classes of such
677 individuals and their dependents), on account of (A) retire-
678 ment, or (B) sickness or accident disability, or (C) medical
679 or hospitalization expenses in connection with sickness or
680 accident disability, or (D) death;

681 (3) Any payment made after December thirty-one, one
682 thousand nine hundred fifty-two, by an employer to an indi-
683 vidual in its employ (including any amount paid by an em-
684 ployer for insurance or annuities, or into a fund, to provide
685 for any such payment) on account of retirement;

686 (4) Any payment made after December thirty-one, one
687 thousand nine hundred fifty-two, by an employer on account
688 of sickness or accident disability, or medical or hospitalization
689 expenses in connection with sickness or accident disability,
690 to, or on behalf of, an individual in its employ after the ex-
691 piration of six calendar months following the last calendar
692 month in which such individual worked for such employer;

693 (5) Any payment made after December thirty-one, one
694 thousand nine hundred fifty-two, by an employer to, or on
695 behalf of, an individual in its employ or his beneficiary (A)

696 from or to a trust described in section 401(a) which is exempt
697 from tax under section 501(a) of the Federal Internal Revenue
698 Code at the time of such payments unless such payment is made
699 to such individual as an employee of the trust as remunera-
700 tion for services rendered by such individual and not as a bene-
701 ficiary of the trust, or (B) under or to an annuity plan which,
702 at the time of such payment, is a plan described in section
703 403(a) of the Federal Internal Revenue Code;

704 (6) The payment by an employer (without deduction from
705 the remuneration of the individual in its employ) of the tax
706 imposed upon an individual in its employ under section 3101
707 of the Federal Internal Revenue Code;

708 (7) Remuneration paid by an employer after December
709 thirty-one, one thousand nine hundred fifty-two, in any medi-
710 um other than cash to an individual in its employ for service
711 not in the course of the employer's trade or business;

712 (8) Any payment (other than vacation or sick pay) made
713 by an employer after December thirty-one, one thousand nine
714 hundred fifty-two, to an individual in its employ after the
715 month in which he attains the age of sixty-five, if he did
716 not work for the employer in the period for which such pay-
717 ment is made;

718 (9) Payments, not required under any contract of hire,
719 made to an individual with respect to his period of training
720 or service in the armed forces of the United States by an em-
721 ployer by which such individual was formerly employed;

722 (10) Vacation pay, severance pay, or savings plans re-
723 ceived by an individual before or after becoming totally or
724 partially unemployed but earned prior to becoming totally or
725 partially unemployed: *Provided*, That the term totally or par-
726 tially unemployed shall not be interpreted to include (1) em-
727 ployees who are on vacation by reason of the request of the
728 employees or their duly authorized agent, for a vacation at a
729 specific time, and which request by the employees or their
730 agent is acceded to by their employer, (2) employees who are
731 on vacation by reason of the employer's request provided they
732 are so informed at least ninety days prior to such vacation,
733 or (3) employees who are on vacation by reason of the em-

734 ployer's request where such vacation is in addition to the
735 regular vacation and the employer compensates such employee
736 at a rate equal to or exceeding their regular daily rate of pay
737 during the vacation period.

738 Gratuities customarily received by an individual in the
739 course of his employment from persons other than his em-
740 ploying unit shall be treated as wages paid by his employing
741 unit, if accounted for and reported to such employing unit.

742 The reasonable cash value of remuneration in any medium
743 other than cash shall be estimated and determined in accor-
744 dance with rules prescribed by the commissioner, except for re-
745 muneration other than cash for services performed in agri-
746 cultural labor and domestic service.

747 "Week" means a calendar week, ending at midnight Satur-
748 day, or the equivalent thereof, as determined in accordance
749 with the regulations prescribed by the commissioner.

750 "Weekly benefit rate" means the maximum amount of bene-
751 fit an eligible individual will receive for one week of total
752 unemployment.

753 "Year" means a calendar year or the equivalent thereof,
754 as determined by the commissioner.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:

3 (1) He has registered for work at and thereafter con-
4 tinues to report at an employment office in accordance with
5 the regulations of the commissioner.

6 (2) He has made a claim for benefits in accordance with
7 the provisions of article seven of this chapter.

8 (3) He is able to work and is available for full-time
9 work for which he is fitted by prior training or experience
10 and is doing that which a reasonably prudent person in his
11 circumstances would do in seeking work.

12 (4) He has been totally unemployed during his benefit
13 year for a waiting period of one week prior to the week for
14 which he claims benefits for total unemployment.

15 (5) He has within his base period earned wages for
16 employment equal to not less than one thousand one hundred
17 fifty dollars and must have earned wages in more than one
18 quarter of his base period.

§21A-6-10. Benefit rate—Total unemployment; annual computation and publication of rates.

1 Each eligible individual who is totally unemployed in any
2 week shall be paid benefits with respect to that week at
3 the weekly rate appearing in Column (C) in Table A in
4 this paragraph, on the line on which in Column (A) there
5 is indicated the employee's wage class, except as otherwise
6 provided under the term "total and partial unemployment"
7 in section three, article one of this chapter. The employee's
8 wage class shall be determined by his base period wages
9 as shown in Column (B) in Table A. The right of an em-
10 ployee to receive benefits shall not be prejudiced nor the
11 amount thereof be diminished by reason of failure by an
12 employer to pay either the wages earned by the employee
13 or the contribution due on such wages. An individual who is
14 totally unemployed but earns in excess of twenty-five dollars
15 as a result of odd-job or subsidiary work in any benefit week
16 shall be paid benefits for such week in accordance with the
17 provisions of this chapter pertaining to benefits for partial
18 unemployment.

19

TABLE A

Wage Class		Wages In Base Period		Weekly Benefit Rate	Maximum Benefit in Benefit Year for Total and/or Partial Unemployment
(Column A)		(Column B)		(Column C)	(Column D)
20		Under	\$ 700.00	Ineligible	-----
21	1	700.00	799.99	\$ 12.00	\$312.00
22	2	800.00	899.99	13.00	338.00
23	3	900.00	999.99	14.00	364.00
24	4	1,000.00	1,149.99	15.00	390.00
25	5	1,150.00	1,299.99	16.00	416.00
26	6	1,300.00	1,449.99	17.00	442.00
27	7	1,450.00	1,599.99	18.00	468.00
28	8	1,600.00	1,749.99	19.00	494.00
29	9	1,750.00	1,899.99	20.00	520.00
30	10	1,900.00	2,049.99	21.00	546.00
31	11	2,050.00	2,199.99	22.00	572.00
32	12	2,200.00	2,349.99	23.00	598.00
33	13	2,350.00	2,499.99	24.00	624.00
34	14	2,500.00	2,599.99	25.00	650.00
35	15	2,600.00	2,699.99	26.00	676.00
36	16	2,700.00	2,799.99	27.00	702.00
37	17	2,800.00	2,899.99	28.00	728.00
38	18	2,900.00	2,999.99	29.00	754.00
39	19	3,000.00	3,099.99	30.00	780.00
40	20	3,100.00	3,199.99	31.00	806.00
41	21	3,200.00	3,349.99	32.00	832.00
42	22	3,350.00	3,499.99	33.00	858.00
43	23	3,500.00	3,649.99	34.00	884.00
44	24	3,650.00	3,799.99	35.00	910.00

45 Notwithstanding any of the foregoing provisions of this sec-
 46 tion, on and after July one, one thousand nine hundred sixty-
 47 seven, the maximum weekly benefit rate shall be forty percent
 48 of the average weekly wage in West Virginia.

49 Notwithstanding any of the foregoing provisions of this sec-

50 tion, on and after July one, one thousand nine hundred seventy,
51 the maximum weekly benefit rate shall be forty-five percent
52 of the average weekly wage in West Virginia.

53 Notwithstanding any of the foregoing provisions of this sec-
54 tion, on and after July one, one thousand nine hundred seventy-
55 one, the maximum weekly benefit rate shall be fifty percent
56 of the average weekly wage in West Virginia.

57 Notwithstanding any of the foregoing provisions of this
58 section, on and after July one, one thousand nine hundred
59 seventy-three, the maximum weekly benefit rate shall be fifty-
60 five percent of the average weekly wage in West Virginia.

61 The commissioner, after he has determined the maximum
62 weekly benefit rate upon the basis of the above formula,
63 shall establish as many additional wage classes as are re-
64 quired, increasing the amount of base period wages required
65 for each class by one hundred fifty dollars, the weekly
66 benefit rate for each class by one dollar, and the maximum
67 benefit by twenty-six dollars. The maximum weekly benefit
68 rate, when computed by the commissioner, in accordance
69 with the foregoing provisions, shall be rounded to the next
70 higher dollar amount, if the computation exceeds forty-nine
71 percent of a dollar amount. Such rounding off to the next
72 higher dollar amount shall result in one additional wage class,
73 with commensurate base period wage requirement of one
74 hundred fifty dollars over the preceding wage class, and
75 with a maximum benefit increase over the preceding wage
76 class of twenty-six dollars. Such an additional wage class
77 shall be published by the commissioner with the table re-
78 quired to be published by the foregoing provisions of this
79 section.

80 Notwithstanding any of the foregoing provisions of this
81 section, including Table A, on and after July one, one thousand
82 nine hundred seventy-four:

83 (1) The maximum weekly benefit rate shall be seventy
84 percent of the average weekly wage in West Virginia.

85 (2) The weekly benefit rate (Column (C) of said Table A)
86 in each and every wage class, one through twenty-four, both
87 inclusive (Column (A) of said Table A), shall be increased
88 two dollars, and the maximum benefit in benefit year for total
89 and/or partial unemployment (Column (D) of said Table A)
90 in each and every wage class (Column (A) of said Table A),
91 shall be increased fifty-two dollars.

92 (3) The commissioner, after he has determined the maxi-
93 mum weekly benefit rate upon the basis of the formula set
94 forth in subdivision (1) above, shall establish as many addi-
95 tional wage classes as are required, increasing the amount of
96 the base period wages required for each wage class by one
97 hundred fifty dollars, establishing the weekly benefit rate for
98 each wage class by rounded dollar amount to be fifty percent
99 of one fifty-second of the median dollar amount of wages in
100 base period for such wage class, and establishing the maxi-
101 mum benefit for each wage class as an amount equal to
102 twenty-eight times the weekly benefit rate. The maximum
103 weekly benefit rate, when computed by the commis-
104 sioner, in accordance with the foregoing provisions, shall
105 be rounded to the next higher dollar amount, if the
106 computation exceeds forty-nine percent of a dollar amount.
107 Such rounding off to the next higher dollar amount
108 shall result in one additional wage class, with com-
109 mensurate base period wage requirement of one hundred
110 fifty dollars over the preceding wage class. Such an addi-
111 tional wage class shall be published by the foregoing pro-
112 visions of this section.

113 Notwithstanding any of the foregoing provisions of this
114 section, on and after July one, one thousand nine hundred
115 seventy-nine, the weekly benefit rate for each wage class
116 by rounded dollar amount shall be fifty-five percent of
117 one fifty-second of the median dollar amount of wages
118 in base period for such wage class except that the
119 weekly benefit rate for classifications one through twenty
120 shall remain unchanged, but in any case the weekly
121 benefit rate on or after July one, one thousand nine
122 hundred seventy-nine, shall be in accordance with Table
123 B below.

124

TABLE B

Wage Class	Wages in Base Period		Weekly	Maximum
			Benefit Rate	Benefit Year and/or Partial Unemployment
125	Under \$1,150.00		Ineligible	
126	1	1,150.00— 1,299.99	18.00	504.00
127	2	1,300.00— 1,449.99	19.00	532.00
128	3	1,450.00— 1,599.99	20.00	560.00
129	4	1,600.00— 1,749.99	21.00	588.00
130	5	1,750.00— 1,899.99	22.00	616.00
131	6	1,900.00— 2,049.99	23.00	644.00
132	7	2,050.00— 2,199.99	24.00	672.00
133	8	2,200.00— 2,349.99	25.00	700.00
134	9	2,350.00— 2,499.99	26.00	728.00
135	10	2,500.00— 2,599.99	27.00	756.00
136	11	2,600.00— 2,699.99	28.00	784.00
137	12	2,700.00— 2,799.99	29.00	812.00
138	13	2,800.00— 2,899.99	30.00	840.00
139	14	2,900.00— 2,999.99	31.00	868.00
140	15	3,000.00— 3,099.99	32.00	896.00
141	16	3,100.00— 3,199.99	33.00	924.00
142	17	3,200.00— 3,349.99	35.00	980.00
143	18	3,350.00— 3,499.99	37.00	1,036.00
144	19	3,500.00— 3,649.99	38.00	1,064.00
145	20	3,650.00— 3,799.99	40.00	1,120.00
146	21	3,800.00— 3,949.99	41.00	1,148.00
147	22	3,950.00— 4,099.99	43.00	1,204.00
148	23	4,100.00— 4,249.99	45.00	1,260.00
149	24	4,250.00— 4,399.99	46.00	1,288.00
150	25	4,400.00— 4,549.99	48.00	1,344.00
151	26	4,550.00— 4,699.99	49.00	1,372.00
152	27	4,700.00— 4,849.99	51.00	1,428.00
153	28	4,850.00— 4,999.99	53.00	1,484.00
154	29	5,000.00— 5,149.99	54.00	1,512.00
155	30	5,150.00— 5,299.99	56.00	1,568.00
156	31	5,300.00— 5,449.99	57.00	1,596.00

157 32	5,450.00—	5,599.99	59.00	1,652.00
158 33	5,600.00—	5,749.99	61.00	1,708.00
159 34	5,750.00—	5,899.99	62.00	1,736.00
160 35	5,900.00—	6,049.99	64.00	1,792.00
161 36	6,050.00—	6,199.99	65.00	1,820.00
162 37	6,200.00—	6,349.99	67.00	1,876.00
163 38	6,350.00—	6,499.99	68.00	1,904.00
164 39	6,500.00—	6,649.99	70.00	1,960.00
165 40	6,650.00—	6,799.99	72.00	2,016.00
166 41	6,800.00—	6,949.99	73.00	2,044.00
167 42	6,950.00—	7,099.99	75.00	2,100.00
168 43	7,100.00—	7,249.99	76.00	2,128.00
169 44	7,250.00—	7,399.99	78.00	2,184.00
170 45	7,400.00—	7,549.99	80.00	2,240.00
171 46	7,550.00—	7,699.99	81.00	2,268.00
172 47	7,700.00—	7,849.99	83.00	2,324.00
173 48	7,850.00—	7,999.99	84.00	2,352.00
174 49	8,000.00—	8,149.99	86.00	2,408.00
175 50	8,150.00—	8,299.99	87.00	2,436.00
176 51	8,300.00—	8,449.99	89.00	2,492.00
177 52	8,450.00—	8,599.99	91.00	2,548.00
178 53	8,600.00—	8,749.99	92.00	2,576.00
179 54	8,750.00—	8,899.99	94.00	2,632.00
180 55	8,900.00—	9,049.99	95.00	2,660.00
181 56	9,050.00—	9,199.99	97.00	2,716.00
182 57	9,200.00—	9,349.99	99.00	2,772.00
183 58	9,350.00—	9,499.99	100.00	2,800.00
184 59	9,500.00—	9,649.99	102.00	2,856.00
185 60	9,650.00—	9,799.99	103.00	2,884.00
186 61	9,800.00—	9,949.99	105.00	2,940.00
187 62	9,950.00—	10,099.99	107.00	2,996.00
188 63	10,100.00—	10,249.99	108.00	3,024.00
189 64	10,250.00—	10,399.99	110.00	3,080.00
190 65	10,400.00—	10,549.99	111.00	3,108.00
191 66	10,550.00—	10,699.99	113.00	3,164.00
192 67	10,700.00—	10,849.99	114.00	3,192.00
193 68	10,850.00—	10,999.99	116.00	3,248.00
194 69	11,000.00—	11,149.99	118.00	3,304.00
195 70	11,150.00—	11,299.99	119.00	3,332.00
196 71	11,300.00—	11,449.99	121.00	3,388.00

197 72	11,450.00— 11,599.99	122.00	3,416.00
198 73	11,600.00— 11,749.99	124.00	3,472.00
199 74	11,750.00— 11,899.99	126.00	3,528.00
200 75	11,900.00— 12,049.99	127.00	3,556.00
201 76	12,050.00— 12,199.99	129.00	3,612.00
202 77	12,200.00— 12,349.99	130.00	3,640.00
203 78	12,350.00— 12,499.99	132.00	3,696.00
204 79	12,500.00— 12,649.99	133.00	3,724.00
205 80	12,650.00— 12,799.99	135.00	3,780.00
206 81	12,800.00— 12,949.99	137.00	3,836.00
207 82	12,950.00— 13,099.99	138.00	3,864.00
208 83	13,100.00— and over	139.00	3,892.00

209 After he has established such additional wage classes,
 210 the commissioner shall prepare and publish a table setting
 211 forth such information.

212 Average weekly wage shall be computed by dividing the
 213 number of employees in West Virginia earning wages in
 214 covered employment into the total wages paid to employees
 215 in West Virginia in covered employment, and by further
 216 dividing said result by fifty-two, and shall be determined
 217 from employer wage and contribution reports for the pre-
 218 vious calendar year which are furnished to the department on
 219 or before June one following such calendar year. The average
 220 weekly wage, as determined by the commissioner, shall be
 221 rounded to the next higher dollar.

222 The computation and determination of rates as aforesaid
 223 shall be completed annually before July one, and any such
 224 new wage class, with its corresponding wages in base period,
 225 weekly benefit rate, and maximum benefit in a benefit year
 226 established by the commissioner in the foregoing manner
 227 effective on a July one, shall apply only to a new claim
 228 established by a claimant on and after said July one, and
 229 shall not apply to continued claims of a claimant based
 230 on his new claim established before said July one.

ARTICLE 9. EMPLOYMENT SECURITY ADMINISTRATION FUND.

§21A-9-5a. Special administration fund.

1 There is hereby created in the state treasury a fund to
 2 be known as the employment security special administration

3 fund, which shall consist of interest collected on delinquent
4 payments pursuant to section seventeen, article five of this
5 chapter. The moneys deposited with this fund are hereby
6 appropriated and made available to the order of the commis-
7 sioner for the purpose of (a) replacements in the employment
8 security administration fund as provided in section eight of this
9 article, (b) to meet special, extraordinary, and contingent ex-
10 penses not provided for in the employment security adminis-
11 tration fund, and (c) refunds pursuant to section nineteen of
12 article five, of interest erroneously collected, and (d) cover
13 expenditures for which federal funds have been authorized but
14 not yet received, subject to repayment to the fund. This fund
15 shall be administered and disbursed in the same manner and
16 under the same conditions as other special funds of the state
17 treasury. Balances to the credit of the special administration
18 fund shall not lapse at any time but shall be continuously avail-
19 able to the commissioner for expenditures consistent with this
20 chapter: *Provided*, That (1) not more than one hundred thou-
21 sand dollars shall be expended from said fund in any fiscal
22 year for purposes (a) and (b); and that not more than five hun-
23 dred thousand dollars shall be expended from said fund in any
24 fiscal year for purpose (d); (2) that at the beginning of each
25 calendar quarter the commissioner shall estimate the amount
26 that may be required in that quarter for refunds of interest
27 erroneously collected; (3) that thereupon the excess, if any,
28 over the amounts provided to be expended under this section
29 shall be paid into the unemployment compensation trust fund.

CHAPTER 116

(S. B. 110—By Mr. Moreland and Mr. Hinkle)

[Passed February 21, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two hundred one, article one; section one hundred fourteen, article five; sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, one hundred seven, two hundred one, two hundred two, two hundred

three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, three hundred one, three hundred two, three hundred three, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven, three hundred twelve, three hundred thirteen, three hundred fourteen, three hundred fifteen, three hundred sixteen, three hundred seventeen, three hundred eighteen, three hundred nineteen, three hundred twenty, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five and four hundred six, article eight, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article eight of said chapter forty-six by adding thereto four new sections, designated sections one hundred eight, three hundred twenty-one, four hundred seven and four hundred eight; and to amend and reenact sections one hundred three, one hundred five, two hundred three, three hundred two, three hundred four, three hundred five, three hundred nine and three hundred twelve, article nine of said chapter forty-six, all relating to the uniform commercial code; adopting amendments thereto generally related to investment securities; relating to general definitions; issuer's duty and privilege to honor; right to reimbursement; index of definitions; issuer's lien; effect of overissue; "overissue"; certificated securities negotiable; statements and instructions not negotiable; presumptions; applicability; securities transferable; action for price; registration of pledge and release of uncertificated securities; "Issuer"; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defects or defenses; effect of issuer's restrictions on transfer; effect of unauthorized signature on certificated security or initial transaction statement; completion or alteration of certificated security or initial transaction statement; rights and duties of issuer with respect to registered owners and registered pledgees; effect of signature of authenticating trustee, registrar or transfer agent; rights acquired by purchaser; "bona fide purchaser"; "adverse claim"; title

acquired by bona fide purchaser; "broker"; notice to purchaser of adverse claims; staleness as notice of adverse claims; warranties on presentment and transfer of certificated securities; warranties of originators of instructions; effect of delivery without indorsement; right to compel indorsement; indorsements; instructions; effect of indorsement without delivery; indorsement of certificated security in bearer form; effect of unauthorized indorsement or instruction; effect of guaranteeing signature, indorsement or instruction; when transfer to the purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary"; duty to transfer, when completed; action against transferee based upon wrongful transfer; purchaser's right to requisites for registration of transfer, pledge or release on books; creditors' rights; no conversion by good faith conduct; statute of frauds; transfer or pledge within a central depository system; enforceability, attachment, perfection and termination of security interests; duty of issuer to register transfer, pledge or release; assurance that indorsements and instructions are effective; issuer's duty as to adverse claims; liability and nonliability for registration; lost, destroyed and stolen certificated securities; duty of authenticating trustee, transfer agent or registrar; exchangeability of securities; statements of uncertificated securities; perfection of security interests in multiple state transactions and definitions and index of definitions relating thereto; attachment and enforceability of security interest; proceeds; formal requisites; when filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession; when possession by secured party perfects security interest without filing; protection of purchasers of instruments, documents and securities; priorities among conflicting security interests in the same collateral.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **General Provisions.**
5. **Letters of Credit.**
8. **Investment Securities.**
9. **Secured Transactions; Sales of Accounts and Chattel Paper.**

ARTICLE 1. GENERAL PROVISIONS.

**PART 2. GENERAL DEFINITIONS
AND PRINCIPLES OF INTERPRETATION.**

§46-1-201. General definitions.

- 1 Subject to additional definitions contained in the sub-
- 2 sequent articles of this chapter which are applicable to

3 specific articles or parts thereof, and unless the context
4 otherwise requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding
6 includes recoupment, counterclaim, setoff, suit in equity
7 and any other proceedings in which rights are deter-
8 mined.

9 (2) "Aggrieved party" means a party entitled to resort
10 to a remedy.

11 (3) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or usage
14 of trade or course of performance as provided in this
15 chapter (sections 1-205 and 2-208). Whether an agree-
16 ment has legal consequences is determined by the pro-
17 visions of this chapter, if applicable; otherwise by the
18 law of contracts (section 1-103). (Compare "Contract.")

19 (4) "Bank" means any person engaged in the business
20 of banking.

21 (5) "Bearer" means the person in possession of an
22 instrument, document of title, or certificated security
23 payable to bearer or indorsed in blank.

24 (6) "Bill of lading" means a document evidencing the
25 receipt of goods for shipment issued by a person engaged
26 in the business of transporting or forwarding goods, and
27 includes an airbill. "Airbill" means a document serving
28 for air transportation as a bill of lading for marine or
29 rail transportation, and includes an air consignment note
30 or air waybill.

31 (7) "Branch" includes a separately incorporated
32 foreign branch of a bank.

33 (8) "Burden of establishing" a fact means the burden
34 of persuading the triers of fact that the existence of the
35 fact is more probable than its nonexistence.

36 (9) "Buyer in ordinary course of business" means a
37 person who in good faith and without knowledge that
38 the sale to him is in violation of the ownership rights

39 or security interest of a third party in the goods buys
40 in ordinary course from a person in the business of
41 selling goods of that kind but does not include a pawn-
42 broker. All persons who sell minerals or the like (in-
43 cluding oil and gas) at wellhead or minehead shall be
44 deemed to be persons in the business of selling goods
45 of that kind. "Buying" may be for cash or by exchange
46 of other property or on secured or unsecured credit and
47 includes receiving goods or documents of title under a
48 preexisting contract for sale but does not include a
49 transfer in bulk or as security for or in total or partial
50 satisfaction of a money debt.

51 (10) "Conspicuous": A term or clause is conspicuous
52 when it is so written that a reasonable person against
53 whom it is to operate ought to have noticed it. A printed
54 heading in capitals (as: NONNEGOTIABLE BILL OF LADING)
55 is conspicuous. Language in the body of a form is "con-
56 spicuous" if it is in larger or other contrasting type or
57 color. But in a telegram any stated term is "conspicu-
58 ous." Whether a term or clause is "conspicuous" or
59 not is for decision by the court.

60 (11) "Contract" means the total legal obligation which
61 results from the parties' agreement as affected by this
62 chapter and any other applicable rules of law. (Compare
63 "Agreement.")

64 (12) "Creditor" includes a general creditor, a secured
65 creditor, a lien creditor and any representative of
66 creditors, including an assignee for the benefit of credi-
67 tors, a trustee in bankruptcy, a receiver in equity and
68 an executor or administrator of an insolvent debtor's
69 or assignor's estate.

70 (13) "Defendant" includes a person in the position
71 of defendant in a cross action or counterclaim.

72 (14) "Delivery" with respect to instruments, docu-
73 ments of title, chattel paper or certificated securities
74 means voluntary transfer of possession.

75 (15) "Document of title" includes bill of lading, dock

76 warrant, dock receipt, warehouse receipt or order for
77 the delivery of goods, and also any other document which
78 in the regular course of business or financing is treated
79 as adequately evidencing that the person in possession
80 of it is entitled to receive, hold and dispose of the
81 document and the goods it covers. To be a document
82 of title a document must purport to be issued by or
83 addressed to a bailee and purport to cover goods in the
84 bailee's possession which are either identified or are
85 fungible portions of an identified mass.

86 (16) "Fault" means wrongful act, omission or breach.

87 (17) "Fungible" with respect to goods or securities
88 means goods or securities of which any unit is, by
89 nature or usage of trade, the equivalent of any other
90 like unit. Goods which are not fungible shall be deemed
91 fungible for the purposes of this chapter to the extent
92 that under a particular agreement or document unlike
93 units are treated as equivalents.

94 (18) "Genuine" means free of forgery or counter-
95 feiting.

96 (19) "Good faith" means honesty in fact in the con-
97 duct or transaction concerned.

98 (20) "Holder" means a person who is in possession of
99 a document of title or an instrument or a certificated
100 investment security drawn, issued or indorsed to him
101 or to his order or to bearer or in blank.

102 (21) To "honor" is to pay or to accept and pay, or
103 where a credit so engages to purchase or discount a draft
104 complying with the terms of the credit.

105 (22) "Insolvency proceedings" includes any assign-
106 ment for the benefit of creditors or other proceedings
107 intended to liquidate or rehabilitate the estate of the
108 person involved.

109 (23) A person is "insolvent" who either has ceased
110 to pay his debts in the ordinary course of business or
111 cannot pay his debts as they become due or is insolvent
112 within the meaning of the Federal Bankruptcy Law.

113 (24) "Money" means a medium of exchange autho-
114 rized or adopted by a domestic or foreign government as
115 a part of its currency.

116 (25) A person has "notice" of a fact when

117 (a) he has actual knowledge of it; or

118 (b) he has received a notice or notification of it; or

119 (c) from all the facts and circumstances known to
120 him at the time in question he has reason to know that
121 it exists.

122 A person "knows" or has "knowledge" of a fact when
123 he has actual knowledge of it. "Discover" or "learn" or
124 a word or phrase of similar import refers to knowledge
125 rather than to reason to know. The time and circum-
126 stances under which a notice or notification may cease
127 to be effective are not determined by this chapter.

128 (26) A person "notifies" or "gives" a notice or notifica-
129 tion to another by taking such steps as may be reasonably
130 required to inform the other in ordinary course whether
131 or not such other actually comes to know of it. A person
132 "receives" a notice or notification when

133 (a) it comes to his attention; or

134 (b) it is duly delivered at the place of business
135 through which the contract was made or at any other
136 place held out by him as the place for receipt of such
137 communications.

138 (27) Notice, knowledge or a notice or notification re-
139 ceived by an organization is effective for a particular
140 transaction from the time when it is brought to the
141 attention of the individual conducting that transaction,
142 and in any event from the time when it would have
143 been brought to his attention if the organization had
144 exercised due diligence. An organization exercises due
145 diligence if it maintains reasonable routines for com-
146 municating significant information to the person conduct-
147 ing the transaction and there is reasonable compliance
148 with the routines. Due diligence does not require an

149 individual acting for the organization to communicate
150 information unless such communication is part of his
151 regular duties or unless he has reason to know of the
152 transaction and that the transaction would be materially
153 affected by the information.

154 (28) "Organization" includes a corporation, govern-
155 ment or governmental subdivision or agency, business
156 trust, estate, trust, partnership or association, two or
157 more persons having a joint or common interest, or any
158 other legal or commercial entity.

159 (29) "Party," as distinct from "third party," means a
160 person who has engaged in a transaction or made an
161 agreement within this chapter.

162 (30) "Person" includes an individual or an organiza-
163 tion (see section 1-102).

164 (31) "Presumption" or "presumed" means that the
165 trier of fact must find the existence of the fact presumed
166 unless and until evidence is introduced which would
167 support a finding of its nonexistence.

168 (32) "Purchase" includes taking by sale, discount,
169 negotiation, mortgage, pledge, lien, issue or reissue, gift
170 or any other voluntary transaction creating an interest
171 in property.

172 (33) "Purchaser" means a person who takes by pur-
173 chase.

174 (34) "Remedy" means any remedial right to which
175 an aggrieved party is entitled with or without resort to
176 a tribunal.

177 (35) "Representative" includes an agent, an officer
178 of a corporation or association, and a trustee, executor
179 or administrator of an estate, or any other person em-
180 powered to act for another.

181 (36) "Rights" includes remedies.

182 (37) "Security interest" means an interest in personal
183 property or fixtures which secures payment or perfor-

184 mance of an obligation. The retention or reservation of
185 title by a seller of goods notwithstanding shipment or
186 delivery to the buyer (section 2-401) is limited in effect
187 to a reservation of a "security interest." The term also
188 includes any interest of a buyer of accounts or chattel
189 paper, which is subject to article 9. The special property
190 interest of a buyer of goods on identification of such
191 goods to a contract for sale under section 2-401 is not a
192 "security interest," but a buyer may also acquire a
193 "security interest" by complying with article 9. Unless
194 a lease or consignment is intended as security, reserva-
195 tion of title thereunder is not a "security interest" but
196 a consignment is in any event subject to the provisions
197 on consignment sales (section 2-326). Whether a lease
198 is intended as security is to be determined by the facts
199 of each case; however, (a) the inclusion of an option to
200 purchase does not of itself make the lease one intended
201 for security, and (b) an agreement that upon compliance
202 with the terms of the lease the lessee shall become or
203 has the option to become the owner of the property for
204 no additional consideration or for a nominal considera-
205 tion does make the lease one intended for security.

206 (38) "Send" in connection with any writing or notice
207 means to deposit in the mail or deliver for transmission
208 by any other usual means of communication with postage
209 or cost of transmission provided for and properly ad-
210 dressed and in the case of an instrument to an address
211 specified thereon or otherwise agreed, or if there be
212 none to any address reasonable under the circumstances.
213 The receipt of any writing or notice within the time
214 at which it would have arrived if properly sent has the
215 effect of a proper sending.

216 (39) "Signed" includes any symbol executed or
217 adopted by a party with present intention to authenti-
218 cate a writing.

219 (40) "Surety" includes guarantor.

220 (41) "Telegram" includes a message transmitted by
221 radio, teletype, cable, any mechanical method of trans-
222 mission, or the like.

223 (42) "Term" means that portion of an agreement
224 which relates to a particular matter.

225 (43) "Unauthorized" signature or indorsement means
226 one made without actual, implied or apparent authority
227 and includes a forgery.

228 (44) "Value". Except as otherwise provided with
229 respect to negotiable instruments and bank collections
230 (sections 3-303, 4-208 and 4-209) a person gives "value"
231 for rights if he acquires them

232 (a) in return for a binding commitment to extend
233 credit or for the extension of immediately available
234 credit whether or not drawn upon and whether or not
235 a charge-back is provided for in the event of difficulties
236 in collection; or

237 (b) as security for or in total or partial satisfaction
238 of a preexisting claim; or

239 (c) by accepting delivery pursuant to a preexisting
240 contract for purchase; or

241 (d) generally, in return for any consideration suf-
242 ficient to support a simple contract.

243 (45) "Warehouse receipt" means a receipt issued by
244 a person engaged in the business of storing goods for
245 hire.

246 (46) "Written" or "writing" includes printing, type-
247 writing or any other intentional reduction to tangible
248 form.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-114. Issuer's duty and privilege to honor; right to re- imbursement.

1 (1) An issuer must honor a draft or demand for pay-
2 ment which complies with the terms of the relevant
3 credit regardless of whether the goods or documents con-
4 form to the underlying contract for sale or other contract
5 between the customer and the beneficiary. The issuer
6 is not excused from honor of such a draft or demand by

7 reason of an additional general term that all documents
8 must be satisfactory to the issuer, but an issuer may
9 require that specified documents must be satisfactory
10 to it.

11 (2) Unless otherwise agreed when documents appear
12 on their face to comply with the terms of a credit but a
13 required document does not in fact conform to the war-
14 ranties made on negotiation or transfer of a document
15 of title (section 7-507) or of a certificated security (section
16 8-306) or is forged or fraudulent or there is fraud in the
17 transaction:

18 (a) the issuer must honor the draft or demand for
19 payment if honor is demanded by a negotiating bank or
20 other holder of the draft or demand which has taken the
21 draft or demand under the credit and under circumstances
22 which would make it a holder in due course (section 3-
23 302) and in an appropriate case would make it a person
24 to whom a document of title has been duly negotiated
25 (section 7-502) or a bona fide purchaser of a certificated
26 security (section 8-302); and

27 (b) in all other cases as against its customer, an
28 issuer acting in good faith may honor the draft or demand
29 for payment despite notification from the customer of
30 fraud, forgery or other defect not apparent on the face
31 of the documents but a court of appropriate jurisdiction
32 may enjoin such honor.

33 (3) Unless otherwise agreed an issuer which has duly
34 honored a draft or demand for payment is entitled to
35 immediate reimbursement of any payment made under
36 the credit and to be put in effectively available funds
37 not later than the day before maturity of any acceptance
38 made under the credit.

39 (4) When a credit provides for payment by the is-
40 suer on receipt of notice that the required documents
41 are in the possession of a correspondent or other agent
42 of the issuer

43 (a) any payment made on receipt of such notice is
44 conditional; and

45 (b) the issuer may reject documents which do not
46 comply with the credit if it does so within three banking
47 days following its receipt of the documents; and

48 (c) in the event of such rejection, the issuer is en-
49 titled by charge-back or otherwise to return of the pay-
50 ment made.

51 (5) In the case covered by subsection (4) failure to
52 reject documents within the time specified in subpara-
53 graph (b) constitutes acceptance of the documents and
54 makes the payment final in favor of the beneficiary.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-102. Definitions and index of definitions.

§46-8-103. Issuer's lien.

§46-8-104. Effect of overissue; "overissue."

§46-8-105. Certificated securities negotiable; statements and instructions not negotiable; presumptions.

§46-8-106. Applicability.

§46-8-107. Securities transferable; action for price.

§46-8-108. Registration of pledge and release of uncertificated securities.

PART 2. ISSUE—ISSUER

§46-8-201. "Issuer."

§46-8-202. Issuer's responsibility and defenses; notice of defect or defense.

§46-8-203. Staleness as notice of defects or defenses.

§46-8-204. Effect of issuer's restrictions on transfer.

§46-8-205. Effect of unauthorized signature on certificated security or initial transaction statement.

§46-8-206. Completion or alteration of certificated security or initial transaction statement.

§46-8-207. Rights and duties of issuer with respect to registered owners and registered pledgees.

§46-8-208. Effect of signature of authenticating trustee, registrar or transfer agent.

PART 3. TRANSFER.

§46-8-301. Rights acquired by purchaser.

§46-8-302. "Bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser.

§46-8-303. "Broker."

§46-8-304. Notice to purchaser of adverse claims.

§46-8-305. Staleness as notice of adverse claims.

§46-8-306. Warranties on presentment and transfer of certificated securities; warranties of originators of instructions.

- §46-8-307. Effect of delivery without indorsement; right to compel indorsement.
- §46-8-308. Indorsements; instructions.
- §46-8-309. Effect of indorsement without delivery.
- §46-8-310. Indorsement of certificated security in bearer form.
- §46-8-311. Effect of unauthorized indorsement or instruction.
- §46-8-312. Effect of guaranteeing signature, indorsement or instruction.
- §46-8-313. When transfer to purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary."
- §46-8-314. Duty to transfer, when completed.
- §46-8-315. Action against transferee based upon wrongful transfer.
- §46-8-316. Purchaser's right to requisites for registration of transfer, pledge or release on books.
- §46-8-317. Creditors' rights.
- §46-8-318. No conversion by good faith conduct.
- §46-8-319. Statute of frauds.
- §46-8-320. Transfer or pledge within central depository system.
- §46-8-321. Enforceability, attachment, perfection and termination of security interests.

PART 4. REGISTRATION.

- §46-8-401. Duty of issuer to register transfer, pledge or release.
- §46-8-402. Assurance that indorsements and instructions are effective.
- §46-8-403. Issuer's duty as to adverse claims.
- §46-8-404. Liability and nonliability for registration.
- §46-8-405. Lost, destroyed and stolen certificated securities.
- §46-8-406. Duty of authenticating trustee, transfer agent or registrar.
- §46-8-407. Exchangeability of securities.
- §46-8-408. Statements of uncertificated securities.

§46-8-102. Definitions and index of definitions.

- 1 (1) In this article, unless the context otherwise re-
- 2 quires:
- 3 (a) A "certificated security" is a share, participation,
- 4 or other interest in property of or an enterprise of the
- 5 issuer or an obligation of the issuer which is
- 6 (i) represented by an instrument issued in bearer
- 7 or registered form;
- 8 (ii) of a type commonly dealt in on securities ex-
- 9 changes or markets or commonly recognized in any
- 10 area in which it is issued or dealt in as a medium for
- 11 investment; and
- 12 (iii) either one of a class or series or by its terms

13 divisible into a class or series of shares, participations,
14 interests, or obligations.

15 (b) An "uncertificated security" is a share, partici-
16 pation, or other interest in property or an enterprise
17 of the issuer or an obligation of the issuer which
18 is

19 (i) not represented by an instrument and the trans-
20 fer of which is registered upon books maintained for
21 that purpose by or on behalf of the issuer;

22 (ii) of a type commonly dealt in on securities ex-
23 changes or markets; and

24 (iii) either one of a class or series or by its terms
25 divisible into a class or series of shares, participations,
26 interests, or obligations.

27 (c) A "security" is either a certificated or an un-
28 certificated security. If a security is certificated, the
29 terms "security" and "certificated security" may mean
30 either the intangible interest, the instrument represent-
31 ing that interest, or both, as the context requires. A
32 writing that is a certificated security is governed by this
33 article and not by article three of this chapter, even though
34 it also meets the requirements of that article. This article
35 does not apply to money. If a certificated security has been
36 retained by or surrendered to the issuer or its transfer
37 agent for reasons other than registration of transfer,
38 other temporary purpose, payment, exchange, or acqui-
39 sition by the issuer, that security shall be treated as an
40 uncertificated security for purposes of this article.

41 (d) A certificated security is in "registered form" if
42 it

43 (i) specifies a person entitled to the security or to
44 the rights it represents, and

45 (ii) its transfer may be registered upon books main-
46 tained for that purpose by or on behalf of the issuer,
47 or the security so states.

48 (e) A certificated security is in "bearer form" if it

49 runs to bearer according to its terms and not by reason
50 of any indorsement.

51 (2) A "subsequent purchaser" is a person who takes
52 other than by original issue.

53 (3) A "clearing corporation" is a corporation regis-
54 tered as a "clearing agency" under the federal securities
55 laws or a corporation;

56 (a) at least ninety percent of whose capital stock
57 is held by or for one or more organizations, none of
58 which, other than a national securities exchange or as-
59 sociation, holds in excess of twenty percent of the
60 capital stock of the corporation, and each of which
61 is

62 (i) subject to supervision or regulation pursuant to
63 the provisions of federal or state banking laws or state
64 insurance laws,

65 (ii) a broker or dealer or investment company reg-
66 istered under the federal securities laws, or

67 (iii) a national securities exchange or association
68 registered under the federal securities laws; and

69 (b) any remaining capital stock of which is held by
70 individuals who have purchased it at or prior to the
71 time of their taking office as directors of the corpora-
72 tion and who have purchased only so much of the capital
73 stock as is necessary to permit them to qualify as
74 directors.

75 (4) A "custodian bank" is a bank or trust company
76 which is supervised and examined by state or federal
77 authority having supervision over banks and is acting
78 as custodian for a clearing corporation.

79 (5) Other definitions applying to this article or to
80 specified parts thereof and the sections in which they
81 appear are:

82 "Adverse claim." Section 8-302.

83 "Bona fide purchaser." Section 8-302.

84 "Broker." Section 8-303.

- 85 "Debtor." Section 9-105.
86 "Financial intermediary." Section 8-313.
87 "Guarantee of the signature." Section 8-402.
88 "Initial transaction statement." Section 8-408.
89 "Instruction." Section 8-308.
90 "Intermediary bank." Section 4-105.
91 "Issuer." Section 8-201.
92 "Overissue." Section 8-104.
93 "Secured Party." Section 9-105.
94 "Security Agreement." Section 9-105.

95 (6) In addition article 1 of this chapter contains gen-
96 eral definitions and principles of construction and inter-
97 pretation applicable throughout this article.

§46-8-103. Issuer's lien.

1 A lien upon a security in favor of an issuer thereof is
2 valid against a purchaser only if:

3 (a) the security is certificated and the right of the
4 issuer to the lien is noted conspicuously thereon; or

5 (b) the security is uncertificated and a notation of
6 the right of the issuer to the lien is contained in the
7 initial transaction statement sent to the purchaser or, if
8 his interest is transferred to him other than by regis-
9 tration of transfer, pledge, or release, the initial trans-
10 action statement sent to the registered owner or the
11 registered pledgee.

§46-8-104. Effect of overissue; "overissue."

1 (1) The provisions of this article which validate a
2 security or compel its issue or reissue do not apply to the
3 extent that validation, issue or reissue would result in
4 overissue; but if:

5 (a) an identical security which does not constitute an
6 overissue is reasonably available for purchase, the person
7 entitled to issue or validation may compel the issuer to
8 purchase the security for him and either to deliver a
9 certificated security or to register the transfer of an
10 uncertificated security to him, against surrender of any
11 certificated security he holds; or

12 (b) a security is not so available for purchase, the
13 person entitled to issue or validation may recover from
14 the issuer the price he or the last purchaser for value
15 paid for it with interest from the date of his demand.

16 (2) "Overissue" means the issue of securities in excess
17 of the amount the issuer has corporate power to issue.

**§46-8-105. Certificated securities negotiable; statements and
instructions not negotiable; presumptions.**

1 (1) Certificated securities governed by this article are
2 negotiable instruments.

3 (2) Statements (section 8-408), notices, or the like,
4 sent by the issuer of uncertificated securities and in-
5 structions (section 8-308) are neither negotiable instru-
6 ments nor certificated securities.

7 (3) In any action on a security:

8 (a) unless specifically denied in the pleadings, each
9 signature on a certificated security, in a necessary in-
10 dorsement, on an initial transaction statement or on an
11 instruction, is admitted;

12 (b) if the effectiveness of a signature is put in issue
13 the burden of establishing it is on the party claiming
14 under the signature but the signature is presumed to be
15 genuine or authorized;

16 (c) if signatures on a certificated security are admitted
17 or established production of the security entitles a holder
18 to recover on it unless the defendant establishes a de-
19 fense or a defect going to the validity of the security;

20 (d) if signatures on an initial transaction statement
21 are admitted or established, the facts stated in the state-
22 ment are presumed to be true as of the time of its
23 issuance; and

24 (e) after it is shown that a defense or defect exists
25 the plaintiff has the burden of establishing that he or
26 some person under whom he claims is a person against
27 whom the defense or defect is ineffective (section 8-202).

§46-8-106. Applicability.

1 The law (including the conflict of laws rules) of the
2 jurisdiction of organization of the issuer governs the
3 validity of a security, the effectiveness of registration
4 by the issuer, and the rights and duties of the issuer
5 with respect to:

- 6 (a) registration of transfer of a certificated security;
- 7 (b) registration of transfer, pledge, or release of an
8 uncertificated security; and
- 9 (c) sending of statements of uncertificated securities.

§46-8-107. Securities transferable; action for price.

1 (1) Unless otherwise agreed and subject to any ap-
2 plicable law or regulation respecting short sales, a person
3 obligated to transfer securities may transfer any certifi-
4 cated security of the specified issue in bearer form or
5 registered in the name of the transferee, or indorsed
6 to him or in blank, or he may transfer an equivalent
7 uncertificated security to the transferee or a person
8 designated by the transferee.

9 (2) If the buyer fails to pay the price as it comes
10 due under a contract of sale the seller may recover the
11 price of:

- 12 (a) certificated securities accepted by the buyer;
- 13 (b) uncertificated securities that have been trans-
14 ferred to the buyer or a person designated by the buyer;
15 and
- 16 (c) other securities if efforts at their resale would
17 be unduly burdensome or if there is no readily available
18 market for their resale.

§46-8-108. Registration of pledge and release of uncertificated securities.

1 A security interest in an uncertificated security may
2 be evidenced by the registration of pledge to the secured
3 party or a person designated by him. There may be no
4 more than one registered pledge of an uncertificated

5 security at any time. The registered owner of an un-
6 certificated security is the person in whose name the
7 security is registered, even if the security is subject to a
8 registered pledge. The rights of a registered pledgee of
9 an uncertificated security under this article are ter-
10 minated by the registration of release.

PART 2. ISSUE—ISSUER.

§46-8-201. "Issuer."

1 (1) With respect to obligations on or defenses to a
2 security "issuer" includes a person who:

3 (a) places or authorizes the placing of his name on a
4 certificated security (otherwise than as authenticating
5 trustee, registrar, transfer agent or the like) to evidence
6 that it represents a share, participation or other interest
7 in his property or in an enterprise, or to evidence his duty
8 to perform an obligation represented by the certificated
9 security;

10 (b) creates shares, participations or other interests
11 in his property or in an enterprise or undertakes obliga-
12 tions, which shares, participations, interests, or obliga-
13 tions are uncertificated securities;

14 (c) directly or indirectly creates fractional interests
15 in his rights or property which fractional interests are
16 represented by certificated securities; or

17 (d) becomes responsible for or in place of any other
18 person described as an issuer in this section.

19 (2) With respect to obligations on or defenses to a
20 security, a guarantor is an issuer to the extent of his
21 guaranty, whether or not his obligation is noted on a
22 certificated security or on statements of uncertificated
23 securities sent pursuant to section 8-408.

24 (3) With respect to registration of transfer, pledge
25 or release (part 4 of this article) "issuer" means a person
26 on whose behalf transfer books are maintained.

§46-8-202. Issuer's responsibility and defenses; notice of defect or defense.

1 (1) Even against a purchaser for value and without
2 notice, the terms of a security include:

- 3 (a) if the security is certificated, those stated on the
4 security;
- 5 (b) if the security is uncertificated, those contained
6 in the initial transaction statement sent to such pur-
7 chaser, or if his interest is transferred to him other
8 than by registration of transfer, pledge, or release, the
9 initial transaction statement sent to the registered owner
10 or registered pledgee; and
- 11 (c) those made part of the security by reference, on
12 the certificated security or in the initial transaction
13 statement, to another instrument, indenture, or docu-
14 ment or to a constitution, statute, ordinance, rule, reg-
15 ulation, order or the like, to the extent that the terms
16 referred to do not conflict with the terms stated on the
17 certificated security or contained in the statement. A
18 reference under this paragraph does not of itself charge
19 a purchaser for value with notice of a defect going to
20 the validity of the security, even though the certificated
21 security or statement expressly states that a person ac-
22 cepting it admits notice.
- 23 (2) A certificated security in the hands of a pur-
24 chaser for value or an uncertificated security as to which
25 an initial transaction statement has been sent to a pur-
26 chaser for value, other than a security issued by a
27 government or governmental agency or unit, even
28 though issued with a defect going to its validity, is valid
29 with respect to the purchaser if he is without notice
30 of the particular defect unless the defect involves a
31 violation of constitutional provisions, in which case the
32 security is valid with respect to a subsequent purchaser
33 for value and without notice of the defect. This sub-
34 section applies to an issuer that is a government or
35 governmental agency or unit only if either there has
36 been substantial compliance with the legal requirements
37 governing the issue or the issuer has received a sub-
38 stantial consideration for the issue as a whole or for
39 the particular security and a stated purpose of the issue
40 is one for which the issuer has power to borrow money
41 or issue the security.

42 (3) Except as provided in the case of certain unau-
43 thorized signatures (section 8-205), lack of genuineness
44 of a certificated security or an initial transaction state-
45 ment is a complete defense, even against a purchaser
46 for value and without notice.

47 (4) All other defenses of the issuer of a certificated
48 or uncertificated security, including nondelivery and
49 conditional delivery of a certificated security, are in-
50 effective against a purchaser for value who has taken
51 without notice of the particular defense.

52 (5) Nothing in this section shall be construed to affect
53 the right of a party to a "when, as and if issued" or
54 "when distributed" contract to cancel the contract in
55 the event of a material change in the character of the
56 security that is the subject of the contract or in the
57 plan or arrangement pursuant to which the security is
58 to be issued or distributed.

§46-8-203. Staleness as notice of defects or defenses.

1 (1) After an act or event creating a right to imme-
2 diate performance of the principal obligation repre-
3 sented by a certificated security or that sets a date on or
4 after which the security is to be presented or surrendered
5 for redemption or exchange, a purchaser is charged with
6 notice of any defect in its issue or defense of the issuer
7 if:

8 (a) the act or event is one requiring the payment
9 of money, the delivery of certificated securities, the
10 registration or transfer of uncertificated securities or
11 any of these on presentation or surrender of the cer-
12 tificated security, the funds or securities are available
13 on the date set for payment or exchange, and he takes
14 the security more than one year after that date; and

15 (b) the act or event is not covered by paragraph
16 (a) and he takes the security more than two years after
17 the date set for surrender or presentation or the date
18 on which performance became due.

19 (2) A call that has been revoked is not within sub-
20 section (1).

§46-8-204. Effect of issuer's restrictions on transfer.

1 A restriction on transfer of a security imposed by the
2 issuer, even though otherwise lawful, is ineffective against
3 any person without actual knowledge of it unless:

4 (a) the security is certificated and the restriction is
5 noted conspicuously thereon; or

6 (b) the security is uncertificated and a notation of
7 the restriction is contained in the initial transaction
8 statement sent to the person or, if his interest is trans-
9 ferred to him other than by registration of transfer,
10 pledge, or release, the initial transaction statement sent
11 to the registered owner or the registered pledgee.

§46-8-205. Effect of unauthorized signature on certificated security or initial transaction statement.

1 An unauthorized signature placed on a certificated
2 security prior to or in the course of issue or placed on an
3 initial transaction statement is ineffective, but the
4 signature is effective in favor of a purchaser for value
5 of the certificated security or a purchaser for value of an
6 uncertificated security to whom such initial transaction
7 statement has been sent, if the purchaser is without
8 notice of the lack of authority and the signing has been
9 done by:

10 (a) an authenticating trustee, registrar, transfer agent,
11 or other person entrusted by the issuer with the signing
12 of the security, of similar securities, or of initial trans-
13 action statements or the immediate preparation for sign-
14 ing of any of them; or

15 (b) an employee of the issuer, or of any of the fore-
16 going, entrusted with responsible handling of the security
17 or initial transaction statement.

§46-8-206. Completion or alteration of certificated security or initial transaction statement.

1 (1) If a certificated security contains the signatures
2 necessary to its issue or transfer but is incomplete in any
3 other respect:

4 (a) any person may complete it by filling in the blanks
5 as authorized; and

6 (b) even though the blanks are incorrectly filled in,
7 the security as completed is enforceable by a purchaser
8 who took it for value and without notice of the incor-
9 rectness.

10 (2) A complete certificated security that has been
11 improperly altered, even though fraudulently, remains
12 enforceable, but only according to its original terms.

13 (3) If an initial transaction statement contains the
14 signatures necessary to its validity, but is incomplete in
15 any other respect:

16 (a) any person may complete it by filling in the blanks
17 as authorized; and

18 (b) even though the blanks are incorrectly filled in,
19 the statement as completed is effective in favor of the
20 person to whom it is sent if he purchased the security
21 referred to therein for value and without notice of the
22 incorrectness.

23 (4) A complete initial transaction statement that has
24 been improperly altered, even though fraudulently, is
25 effective in favor of a purchaser to whom it has been sent,
26 but only according to its original terms.

**§46-8-207. Rights and duties of issuer with respect to regis-
tered owners and registered pledgees.**

1 (1) Prior to due presentment for registration of trans-
2 fer of a certificated security in registered form, the issuer
3 or indenture trustee may treat the registered owner
4 as the person exclusively entitled to vote, to receive
5 notifications, and otherwise to exercise all the rights and
6 powers of an owner.

7 (2) Subject to the provisions of subsections (3), (4),
8 and (6), the issuer or indenture trustee may treat the
9 registered owner of an uncertificated security as the per-
10 son exclusively entitled to vote, to receive notifications,
11 and otherwise to exercise all the rights and powers of an
12 owner.

13 (3) The registered owner of an uncertificated security
14 that is subject to a registered pledge is not entitled to
15 registration of transfer prior to the due presentment to
16 the issuer of a release instruction. The exercise of con-
17 version rights with respect to a convertible uncertificated
18 security is a transfer within the meaning of this section.

19 (4) Upon due presentment of a transfer instruction
20 from the registered pledgee of an uncertificated security,
21 the issuer shall:

22 (a) register the transfer of the security to the new
23 owner free of pledge, if the instruction specifies a new
24 owner (who may be the registered pledgee) and does not
25 specify a pledgee;

26 (b) register the transfer of the security to the new
27 owner subject to the interest of the existing pledgee, if
28 the instruction specifies a new owner and the existing
29 pledgees; or

30 (c) register the release of the security from the exist-
31 ing pledge and register the pledge of the security to
32 the other pledgee, if the instruction specifies the existing
33 owner and another pledgee.

34 (5) Continuity of perfection of a security interest is
35 not broken by registration of transfer under subsection
36 (4) (b) or by registration of release and pledge under
37 subsection (4) (c), if the security interest is assigned.

38 (6) If an uncertificated security is subject to a regis-
39 tered pledge:

40 (a) any uncertificated securities issued in exchange
41 for or distributed with respect to the pledged security
42 shall be registered subject to the pledge;

43 (b) any certificated securities issued in exchange for
44 or distributed with respect to the pledged security shall
45 be delivered to the registered pledgee; and

46 (c) any money paid in exchange for or in redemption
47 of part or all of the security shall be paid to the registered
48 pledgee.

49 (7) Nothing in this article shall be construed to affect
50 the liability of the registered owner of a security for
51 calls, assessments or the like.

§46-8-208. Effect of signature of authenticating trustee, registrar or transfer agent.

1 (1) A person placing his signature upon a certificated
2 security or an initial transaction statement as authenti-
3 cating trustee, registrar, transfer agent or the like,
4 warrants to a purchaser for value of the certificated
5 security or a purchaser for value of an uncertificated
6 security to whom the initial transaction statement has
7 been sent, if the purchaser is without notice of the
8 particular defect that:

9 (a) the certificated security or initial transaction
10 statement is genuine;

11 (b) his own participation in the issue or registration
12 of the transfer, pledge or release of the security is within
13 his capacity and within the scope of the authority re-
14 ceived by him from the issuer; and

15 (c) he has reasonable grounds to believe that the
16 security is in the form and within the amount the issuer
17 is authorized to issue.

18 (2) Unless otherwise agreed, a person by so placing
19 his signature does not assume responsibility for the
20 validity of the security in other respects.

PART 3. TRANSFER.

§46-8-301. Rights acquired by purchaser.

1 (1) Upon transfer of a security to a purchaser (section
2 8-313), the purchaser acquires the rights in the security
3 which his transferor had or had actual authority to con-
4 vey unless the purchaser's rights are limited by section
5 8-302 (4).

6 (2) A transferee of a limited interest acquires rights
7 only to the extent of the interest transferred. The crea-

8 tion or release of a security interest in a security is the
9 transfer of a limited interest in that security.

§46-8-302. "Bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser.

1 (1) A "bona fide purchaser" is a purchaser for value
2 in good faith and without notice of any adverse claim:

3 (a) who takes delivery of a certificated security in
4 bearer form or in registered form, issued or indorsed to
5 him or in blank;

6 (b) to whom the transfer, pledge or release of an
7 uncertificated security is registered on the books of the
8 issuer; or

9 (c) to whom a security is transferred under the pro-
10 visions of paragraph (c), (d), (i) or (g) of section
11 8-313(1).

12 (2) "Adverse claim" includes a claim that a transfer
13 was or would be wrongful or that a particular adverse
14 person is the owner of or has an interest in the security.

15 (3) A bona fide purchaser in addition to acquiring the
16 rights of a purchaser (section 8-301) also acquires his
17 interest in the security free of any adverse claim.

18 (4) Notwithstanding section 8-301(1), the transferee
19 of a particular certificated security who has been a party
20 to any fraud or illegality affecting the security, or who
21 as a prior holder of that certificated security had notice
22 of an adverse claim, cannot improve his position by
23 taking from a bona fide purchaser.

§46-8-303. "Broker."

1 "Broker" means a person engaged for all or part of
2 his time in the business of buying and selling securities,
3 who in the transaction concerned acts for, buys a
4 security from, or sells a security to a customer. Nothing
5 in this article determines the capacity in which a person
6 acts for purposes of any other statute or rule to which
7 the person is subject.

§46-8-304. Notice to purchaser of adverse claims.

1 (1) A purchaser (including the broker for the seller
2 or buyer but excluding an intermediary bank) of a
3 certificated security is charged with notice of adverse
4 claims if:

5 (a) the security, whether in bearer or registered
6 form, has been indorsed "for collection" or "for sur-
7 render" or for some other purpose not involving trans-
8 fer; or

9 (b) the security is in bearer form and has on it an
10 unambiguous statement that it is the property of a
11 person other than the transferor. The mere writing
12 of a name on a security is not such a statement.

13 (2) A purchaser (including a broker for the seller or
14 buyer, but excluding an intermediary bank) to whom
15 the transfer, pledge, or release of an uncertificated se-
16 curity is registered is charged with notice of adverse
17 claims as to which the issuer has a duty under section
18 8-403 (4) at the time of registration and which are noted
19 in the initial transaction statement sent to the pur-
20 chaser or, if his interest is transferred to him other
21 than by registration of transfer, pledge, or release, the
22 initial transaction statement sent to the registered
23 owner or the registered pledgee.

24 (3) The fact that the purchaser (including a broker
25 for the seller or buyer) of a certificated or uncertificated
26 security has notice that the security is held for a third
27 person or is registered in the name of or indorsed by
28 a fiduciary does not create a duty of inquiry into the
29 rightfulness of the transfer or constitute constructive
30 notice of adverse claims. However, if the purchaser
31 (excluding an intermediary bank) has knowledge that
32 the proceeds are being used or the transaction is for
33 the individual benefit of the fiduciary or otherwise in
34 breach of duty, the purchaser is charged with notice
35 of adverse claims.

§46-8-305. Staleness as notice of adverse claims.

1 An act or event that creates a right to immediate

2 performance of the principal obligation represented by
3 a certificated security or sets a date on or after which
4 a certificated security is to be presented or surrendered
5 for redemption or exchange does not itself consti-
6 tute any notice of adverse claims except in the case
7 of a transfer:

8 (a) after one year from any date set for presentment
9 or surrender for redemption or exchange; or

10 (b) after six months from any date set for payment
11 of money against presentation or surrender of the
12 security if funds are available for payment on that
13 date.

**§46-8-306. Warranties on presentment and transfer of certifi-
cated securities; warranties of originators of in-
structions.**

1 (1) A person who presents a certificated security for
2 registration of transfer or for payment or exchange
3 warrants to the issuer that he is entitled to the regis-
4 tration, payment or exchange. But a purchaser for
5 value and without notice of adverse claims who re-
6 ceives a new, reissued or reregistered certificated se-
7 curity on registration of transfer or receives an initial
8 transaction statement confirming the registration of
9 transfer of an equivalent uncertificated security to him
10 warrants only that he has no knowledge of any unau-
11 thorized signature (section 8-311) in a necessary in-
12 dorsement.

13 (2) A person by transferring a certificated security
14 to a purchaser for value warrants only that:

15 (a) his transfer is effective and rightful;

16 (b) the security is genuine and has not been materi-
17 ally altered; and

18 (c) he knows of no fact which might impair the
19 validity of the security.

20 (3) If a certificated security is delivered by an in-
21 termediary known to be entrusted with delivery of the

22 security on behalf of another or with collection of a
23 draft or other claim against delivery, the intermediary
24 by delivery warrants only his own good faith and
25 authority, even though he has purchased or made ad-
26 vances against the claim to be collected against the
27 delivery.

28 (4) A pledgee or other holder for security who rede-
29 livers a certificated security received, or after payment
30 and on order of the debtor delivers that security to
31 a third person, makes only the warranties of an inter-
32 mediary under subsection (3).

33 (5) A person who originates an instruction warrants
34 to the issuer that:

35 (a) he is an appropriate person to originate the in-
36 struction; and

37 (b) at the time the instruction is presented to the
38 issuer he will be entitled to the registration of transfer,
39 pledge, or release.

40 (6) A person who originates an instruction warrants
41 to any person specially guaranteeing his signature (sub-
42 section 8-312 (3)) that:

43 (a) he is an appropriate person to originate the in-
44 struction; and

45 (b) at the time the instruction is presented to the
46 issuer

47 (i) he will be entitled to the registration of transfer,
48 pledge, or release; and

49 (ii) the transfer, pledge, or release requested in the
50 instruction will be registered by the issuer free from
51 all liens, security interests, restrictions, and claims other
52 than those specified in the instruction.

53 (7) A person who originates an instruction warrants
54 to a purchaser for value and to any person guaranteeing
55 the instruction (section 8-312 (6)) that:

56 (a) he is an appropriate person to originate the in-
57 struction;

58 (b) the uncertificated security referred to therein is
59 valid; and

60 (c) at the time the instruction is presented to the
61 issuer

62 (i) the transferor will be entitled to the registration
63 of transfer, pledge, or release;

64 (ii) the transfer, pledge, or release requested in the
65 instruction will be registered by the issuer free from
66 all liens, security interests, restrictions, and claims other
67 than those specified in the instruction; and

68 (iii) the requested transfer, pledge, or release will
69 be rightful.

70 (8) If a secured party is the registered pledgee or
71 the registered owner of an uncertificated security, a
72 person who originates an instruction of release or
73 transfer to the debtor or, after payment and on order
74 of the debtor, a transfer instruction to a third person,
75 warrants to the debtor or the third person only that
76 he is an appropriate person to originate the instruction
77 and at the time the instruction is presented to the
78 issuer, the transferor will be entitled to the registration
79 of release or transfer. If a transfer instruction to a third
80 person who is a purchaser for value is originated on
81 order of the debtor, the debtor makes to the purchaser
82 the warranties of paragraphs (b), (c) (ii) and (c) (iii)
83 of subsection (7).

84 (9) A person who transfers an uncertificated security
85 to a purchaser for value and does not originate an in-
86 struction in connection with the transfer warrants only
87 that:

88 (a) his transfer is effective and rightful; and

89 (b) the uncertificated security is valid.

90 (10) A broker gives to his customer and to the issuer
91 and a purchaser the applicable warranties provided in
92 this section and has the rights and privileges of a pur-
93 chaser under this section. The warranties of and in

94 favor of the broker acting as an agent are in addition
95 to applicable warranties given by and in favor of his
96 customer.

**§46-8-307. Effect of delivery without indorsement; right to
compel indorsement.**

1 If a certificated security in registered form has been
2 delivered to a purchaser without a necessary indorse-
3 ment he may become a bona fide purchaser only as of
4 the time the indorsement is supplied; but against the
5 transferor, the transfer is complete upon delivery and
6 the purchaser has a specifically enforceable right to have
7 any necessary indorsement supplied.

§46-8-308. Indorsements; instructions.

1 (1) An indorsement of a certificated security in
2 registered form is made when an appropriate person
3 signs on it or on a separate document an assignment or
4 transfer of the security or a power to assign or transfer
5 it or his signature is written without more upon the
6 back of the security.

7 (2) An indorsement may be in blank or special. An
8 indorsement in blank includes an indorsement to bearer.
9 A special indorsement specifies to whom the security
10 is to be transferred, or who has power to transfer it.
11 A holder may convert a blank indorsement into a special
12 indorsement.

13 (3) An indorsement purporting to be only of part of a
14 certificated security representing units intended by the
15 issuer to be separately transferable is effective to the
16 extent of the indorsement.

17 (4) An "instruction" is an order to the issuer of an
18 uncertificated security requesting that the transfer,
19 pledge, or release from pledge of the uncertificated
20 security specified therein be registered.

21 (5) An instruction originated by an appropriate per-
22 son is:

23 (a) a writing signed by an appropriate person; or

24 (b) a communication to the issuer in any form agreed
25 upon in a writing signed by the issuer and an appropriate
26 person.

27 If an instruction has been originated by an appropriate
28 person but is incomplete in any other respect, any person
29 may complete it as authorized and the issuer may rely
30 on it as completed even though it has been completed
31 incorrectly.

32 (6) "An appropriate person" in subsection (1) means
33 the person specified by the certificated security or by
34 special indorsement to be entitled to the security.

35 (7) "An appropriate person" in subsection (5) means:

36 (a) for an instruction to transfer or pledge an un-
37 certificated security which is then not subject to a
38 registered pledge, the registered owner; or

39 (b) for an instruction to transfer or release an un-
40 certificated security which is then subject to a registered
41 pledge, the registered pledgee.

42 (8) In addition to the persons designated in subsections
43 (6) and (7), "an appropriate person" in subsections
44 (1) and (5) includes:

45 (a) if the person designated is described as a fiduciary
46 but is no longer serving in the described capacity, either
47 that person or his successor;

48 (b) if the persons designated are described as more
49 than one person as fiduciaries and one or more are no
50 longer serving in the described capacity, the remaining
51 fiduciary or fiduciaries, whether or not a successor has
52 been appointed or qualified;

53 (c) if the person designated is an individual and is
54 without capacity to act by virtue of death, incompetence,
55 infancy, or otherwise, his executor, administrator, guard-
56 ian or like fiduciary;

57 (d) if the persons designated are described as more
58 than one person as tenants by the entirety or with right

59 of survivorship and by reason of death all cannot sign,
60 the survivor or survivors;

61 (e) a person having power to sign under applicable
62 law or controlling instrument; and

63 (f) to the extent that the person designated or any
64 of the foregoing persons may act through an agent, his
65 authorized agent.

66 (9) Unless otherwise agreed, the indorser of a certi-
67 ficated security by his indorsement or the originator of
68 an instruction by his origination assumes no obligation
69 that the security will be honored by the issuer but only
70 the obligations provided in section 8-306.

71 (10) Whether the person signing is appropriate is
72 determined as of the date of signing and an indorsement
73 made by or an instruction originated by him does not
74 become unauthorized for the purposes of this article by
75 virtue of any subsequent change of circumstances.

76 (11) Failure of a fiduciary to comply with a controlling
77 instrument or with the law of the state having jurisdic-
78 tion of the fiduciary relationship, including any law
79 requiring the fiduciary to obtain court approval of the
80 transfer, pledge or release, does not render his indorse-
81 ment or an instruction originated by him unauthorized
82 for the purposes of this article.

§46-8-309. Effect of indorsement without delivery.

1 An indorsement of a certificated security, whether
2 special or in blank, does not constitute a transfer until
3 delivery of the certificated security on which it appears
4 or, if the indorsement is on a separate document, until
5 delivery of both the documents and the certificated
6 security.

§46-8-310. Indorsement of certificated security in bearer form.

1 An indorsement of a certificated security in bearer
2 form may give notice of adverse claims (section 8-304)
3 but does not otherwise affect any right to registration the
4 holder possesses.

§46-8-311. Effect of unauthorized indorsement or instruction.

1 Unless the owner or pledgee has ratified an unautho-
2 rized indorsement or instruction or is otherwise pre-
3 cluded from asserting its ineffectiveness:

4 (a) he may assert its ineffectiveness against the issuer
5 or any purchaser, other than a purchaser for value
6 and without notice of adverse claims, who has in good
7 faith received a new, reissued or reregistered certificated
8 security on registration of transfer or received an initial
9 transaction statement confirming the registration of
10 transfer, pledge, or release of an equivalent uncertificated
11 security to him; and

12 (b) an issuer who registers the transfer of a certifi-
13 cated security upon the unauthorized indorsement or
14 who registers the transfer, pledge, or release of an un-
15 certificated security upon the unauthorized instruction
16 is subject to liability for improper registration (section
17 8-404).

§46-8-312. Effect of guaranteeing signature, indorsement or instruction.

1 (1) Any person guaranteeing a signature of an indor-
2 ser of a certificated security warrants that at the time of
3 signing:

4 (a) the signature was genuine;

5 (b) the signer was an appropriate person to indorse
6 (section 8-308); and

7 (c) the signer had legal capacity to sign.

8 (2) Any person guaranteeing a signature of the origi-
9 nator of an instruction warrants that at the time of
10 signing:

11 (a) the signature was genuine;

12 (b) the signer was an appropriate person to originate
13 the instruction (section 8-308) if the person specified in
14 the instruction as the registered owner or registered
15 pledgee of the uncertificated security was, in fact, the

16 registered owner or registered pledgee of such security,
17 as to which fact the signature guarantor makes no war-
18 ranty;

19 (c) the signer had legal capacity to sign; and

20 (d) the taxpayer identification number, if any, appear-
21 ing on the instruction as that of the registered owner or
22 registered pledgee was the taxpayer identification number
23 of the signer or of the owner or pledgee for whom the
24 signer was acting.

25 (3) Any person specially guaranteeing the signature of
26 the originator of an instruction makes not only the war-
27 ranties of a signature guarantor (subsection (2)) but also
28 warrants that at the time the instruction is presented to
29 the issuer:

30 (a) the person specified in the instruction as the regis-
31 tered owner or registered pledgee of the uncertificated
32 security will be the registered owner or registered pledg-
33 ee; and

34 (b) the transfer, pledge, or release of the uncertificated
35 security requested in the instruction will be registered by
36 the issuer free from all liens, security interests, restric-
37 tions, and claims other than those specified in the in-
38 struction.

39 (4) The guarantor under subsections (1) and (2) or
40 the special guarantor under subsection (3) does not
41 otherwise warrant the rightfulness of the particular
42 transfer, pledge, or release.

43 (5) Any person guaranteeing an indorsement of a
44 certificated security makes not only the warranties of a
45 signature guarantor under subsection (1) but also war-
46 rants the rightfulness of the particular transfer in all
47 respects.

48 (6) Any person guaranteeing an instruction requesting
49 the transfer, pledge, or release of an uncertificated secur-
50 ity makes not only the warranties of a special signature
51 guarantor under subsection (3) but also warrants the

52 rightfulness of the particular transfer, pledge, or release
53 in all respects.

54 (7) No issuer may require a special guarantee of sig-
55 nature (subsection (3)), a guarantee of indorsement
56 (subsection (5)), or a guarantee of instruction (subsection
57 (6)) as a condition to registration of transfer, pledge, or
58 release.

59 (8) The foregoing warranties are made to any person
60 taking or dealing with the security in reliance on the
61 guarantee, and the guarantor is liable to the person for
62 any loss resulting from breach of the warranties.

**§46-8-313. When transfer to purchaser occurs; financial inter-
mediary as bona fide purchaser; "financial inter-
mediary."**

1 (1) Transfer of a security or a limited interest (in-
2 cluding a security interest) therein to a purchaser occurs
3 only:

4 (a) at the time he or a person designated by him
5 acquires possession of a certificated security;

6 (b) at the time the transfer, pledge, or release of an
7 uncertificated security is registered to him or a person
8 designated by him;

9 (c) at the time his financial intermediary acquires
10 possession of a certificated security specially indorsed
11 to or issued in the name of the purchaser;

12 (d) at the time a financial intermediary, not a clearing
13 corporation, sends him confirmation of the purchase and
14 also by book entry or otherwise identifies as belonging
15 to the purchaser

16 (i) a specific certificated security in the financial
17 intermediary's possession;

18 (ii) a quantity of securities that constitute or are
19 part of a fungible bulk of certificated securities in the
20 financial intermediary's possession or of uncertificated

21 securities registered in the name of the financial inter-
22 mediary; or

23 (iii) a quantity of securities that constitute or are
24 part of a fungible bulk of securities shown on the ac-
25 count of the financial intermediary on the books of an-
26 other financial intermediary;

27 (e) with respect to an identified certificated security
28 to be delivered while still in the possession of a third
29 person, not a financial intermediary, at the time that
30 person acknowledges that he holds for the pur-
31 chaser;

32 (f) with respect to a specific uncertificated security
33 the pledge or transfer of which has been registered to
34 a third person, not a financial intermediary, at the time
35 that person acknowledges that he holds for the pur-
36 chaser;

37 (g) at the time appropriate entries to the account of
38 the purchaser or a person designated by him on the books
39 of a clearing corporation are made under section 8-320;

40 (h) with respect to the transfer of a security interest
41 where the debtor has signed a security agreement con-
42 taining a description of the security, at the time a written
43 notification, which, in the case of the creation of the
44 security interest, is signed by the debtor (which may be
45 a copy of the security agreement) or which, in the case
46 of the release or assignment of the security interest
47 created pursuant to this paragraph, is signed by the
48 secured party, is received by

49 (i) a financial intermediary on whose books the in-
50 terest of the transferor in the security appears;

51 (ii) a third person, not a financial intermediary, in
52 possession of the security, if it is certificated;

53 (iii) a third person, not a financial intermediary, who
54 is the registered owner of the security, if it is uncertifi-
55 cated and not subject to a registered pledge; or

56 (iv) a third person, not a financial intermediary, who

57 is the registered pledgee of the security, if it is un-
58 certificated and subject to a registered pledge;

59 (i) with respect to the transfer of a security interest
60 where the transferor has signed a security agreement
61 containing a description of the security, at the time new
62 value is given by the secured party; or

63 (j) with respect to the transfer of a security interest
64 where the secured party is a financial intermediary and
65 the security has already been transferred to the financial
66 intermediary under paragraph (a), (b), (c), (d) or
67 (g), at the time the transferor has signed a security
68 agreement containing a description of the security and
69 value is given by the secured party.

70 (2) The purchaser is the owner of a security held for
71 him by a financial intermediary, but cannot be a bona
72 fide purchaser of a security so held except in the circum-
73 stances specified in paragraphs (c), (d), (i) and (g) of
74 subsection (1). If a security so held is part of a fungible
75 bulk, as in the circumstances specified in paragraphs
76 (d) (ii) and (d) (iii) of subsection (1), the purchaser
77 is the owner of a proportionate property interest in the
78 fungible bulk.

79 (3) Notice of an adverse claim received by the finan-
80 cial intermediary or by the purchaser after the financial
81 intermediary takes delivery of a certificated security as
82 a holder for value or after the transfer, pledge, or release
83 of an uncertificated security has been registered free
84 of the claim to a financial intermediary who has given
85 value is not effective either as to the financial intermedi-
86 ary or as to the purchaser. However, as between the
87 financial intermediary and the purchaser, the purchaser
88 may demand transfer of an equivalent security as to
89 which no notice of adverse claim has been received.

90 (4) A "financial intermediary" is a bank, broker,
91 clearing corporation or other person (or the nominee of
92 any of them) which in the ordinary course of its business
93 maintains security accounts for its customers and is
94 acting in that capacity. A financial intermediary may

95 have a security interest in securities held in account for
96 its customer.

§46-8-314. Duty to transfer, when completed.

1 (1) Unless otherwise agreed, if a sale of a security is
2 made on an exchange or otherwise through brokers:

3 (a) the selling customer fulfills his duty to transfer
4 at the time he:

5 (i) places a certificated security in the possession of
6 the selling broker or of a person designated by the
7 broker;

8 (ii) causes an uncertificated security to be registered
9 in the name of the selling broker or a person designated
10 by the broker;

11 (iii) if requested, causes an acknowledgment to be
12 made to the selling broker that a certificated or uncerti-
13 ficated security is held for the broker; or

14 (iv) places in the possession of the selling broker or
15 of a person designated by the broker a transfer instruc-
16 tion for an uncertificated security, providing the issuer
17 does not refuse to register the requested transfer if the
18 instruction is presented to the issuer for registration
19 within thirty days thereafter; and

20 (b) the selling broker, including a correspondent
21 broker acting for a selling customer, fulfills his duty to
22 transfer at the time he:

23 (i) places a certificated security in the possession of
24 the buying broker or a person designated by the buying
25 broker;

26 (ii) causes an uncertificated security to be registered
27 in the name of the buying broker or a person designated
28 by the buying broker;

29 (iii) places in the possession of the buying broker or
30 of a person designated by the buying broker a transfer
31 instruction for an uncertificated security, providing the
32 issuer does not refuse to register the requested transfer

- 33 if the instruction is presented to the issuer for registra-
34 tion within thirty days thereafter; or
- 35 (iv) effects clearance of the sale in accordance with
36 the rules of the exchange on which the transaction took
37 place.
- 38 (2) Except as provided in this section and unless other-
39 wise agreed, a transferor's duty to transfer a security
40 under a contract of purchase is not fulfilled until he:
- 41 (a) places a certificated security in form to be
42 negotiated by the purchaser in the possession of the
43 purchaser or of a person designated by the purchaser;
- 44 (b) causes an uncertificated security to be registered
45 in the name of the purchaser or a person designated by
46 the purchaser; or
- 47 (c) if the purchaser requests, causes an acknowledg-
48 ment to be made to the purchaser that a certificated or
49 uncertificated security is held for the purchaser.
- 50 (3) Unless made on an exchange, a sale to a broker
51 purchasing for his own account is within subsection (2)
52 and not within subsection (1).

§46-8-315. Action against transferee based upon wrongful transfer.

- 1 (1) Any person against whom the transfer of a
2 security is wrongful for any reason, including his in-
3 capacity, as against anyone except a bona fide pur-
4 chaser may:
- 5 (a) reclaim possession of the certificated security
6 wrongfully transferred;
- 7 (b) obtain possession of any new certificated security
8 representing all or part of the same rights;
- 9 (c) compel the origination of an instruction to trans-
10 fer to him or a person designated by him an uncertifi-
11 cated security constituting all or part of the same rights;
12 or
- 13 (d) have damages.

14 (2) If the transfer is wrongful because of an unau-
15 thorized indorsement of a certificated security, the owner
16 may also reclaim or obtain possession of the security
17 or a new certificated security even from a bona fide
18 purchaser, if the ineffectiveness of the purported in-
19 dorsement can be asserted against him under the pro-
20 visions of this article on unauthorized indorsements
21 (section 8-311).

22 (3) The right to obtain or reclaim possession of a
23 certificated security or to compel the origination of a
24 transfer instruction may be specifically enforced and
25 the transfer of a certificated or uncertificated security
26 enjoined and a certificated security impounded pending
27 the litigation.

**§46-8-316. Purchaser's right to requisites for registration of
transfer, pledge or release on books.**

1 Unless otherwise agreed, the transferor of a certificated
2 security or the transferor, pledgor, or pledgee of an
3 uncertificated security on due demand must supply his
4 purchaser with any proof of his authority to transfer,
5 pledge or release or with any other requisite necessary
6 to obtain registration of the transfer, pledge or release
7 of the security; but if the transfer, pledge or release is
8 not for value, a transferor, pledgor or pledgee need not
9 do so unless the purchaser furnishes the necessary
10 expenses. Failure within a reasonable time to comply
11 with a demand made gives the purchaser the right to
12 reject or rescind the transfer, pledge or release.

§46-8-317. Creditors' rights.

1 (1) Subject to the exceptions in subsections (3) and
2 (4), no attachment or levy upon a certificated security
3 or any share or other interest represented thereby which
4 is outstanding is valid until the security is actually
5 seized by the officer making the attachment or levy,
6 but a certificated security which has been surrendered
7 to the issuer may be reached by a creditor by legal
8 process at the issuer's chief executive office in the United
9 States.

10 (2) An uncertificated security registered in the name
11 of the debtor may not be reached by a creditor except
12 by legal process at the issuer's chief executive office
13 in the United States.

14 (3) The interest of a debtor in a certificated security
15 that is in the possession of a secured party not a finan-
16 cial intermediary or in an uncertificated security reg-
17 istered in the name of a secured party not a financial
18 intermediary (or in the name of a nominee of the se-
19 cured party) may be reached by a creditor by legal
20 process upon the secured party.

21 (4) The interest of a debtor in a certificated security
22 that is in the possession of or registered in the name
23 of a financial intermediary or in an uncertificated se-
24 curity registered in the name of a financial intermediary
25 may be reached by a creditor by legal process upon the
26 financial intermediary on whose books the interest of
27 the debtor appears.

28 (5) Unless otherwise provided by law, a creditor's
29 lien upon the interest of a debtor in a security obtained
30 pursuant to subsection (3) or (4) is not a restraint on
31 the transfer of the security, free of the lien, to a third
32 party for new value; but in the event of a transfer, the
33 lien applies to the proceeds of the transfer in the hands
34 of the secured party or financial intermediary, subject
35 to any claims having priority.

36 (6) A creditor whose debtor is the owner of a security
37 is entitled to aid from courts of appropriate jurisdiction,
38 by injunction or otherwise, in reaching the security or
39 in satisfying the claim by means allowed at law or in
40 equity in regard to property that cannot readily be
41 reached by ordinary legal process.

§46-8-318. No conversion by good faith conduct.

1 An agent or bailee who in good faith (including ob-
2 servance of reasonable commercial standards if he is in
3 the business of buying, selling or otherwise dealing with
4 securities) has received certificated securities and sold,
5 pledged or delivered them or has sold or caused the

6 transfer or pledge of uncertificated securities over which
7 he had control according to the instructions of his prin-
8 cipal, is not liable for conversion or for participation in
9 breach of fiduciary duty although the principal had no
10 right so to deal with the securities.

§46-8-319. Statute of frauds.

1 A contract for the sale of securities is not enforceable
2 by way of action or defense unless:

3 (a) there is some writing signed by the party against
4 whom enforcement is sought or by his authorized agent
5 or broker sufficient to indicate that a contract has been
6 made for sale of a stated quantity of described securities
7 at a defined or stated price;

8 (b) delivery of a certificated security or transfer in-
9 struction has been accepted, or transfer of an uncertifi-
10 cated security has been registered and the transferee has
11 failed to send written objection to the issuer within ten
12 days after receipt of the initial transaction statement
13 confirming the registration, or payment has been made,
14 but the contract is enforceable under this provision only
15 to the extent of the delivery, registration or payment;

16 (c) within a reasonable time a writing in confirma-
17 tion of the sale or purchase and sufficient against the
18 sender under paragraph (a) has been received by the
19 party against whom enforcement is sought and he has
20 failed to send written objection to its contents within
21 ten days after its receipt; or

22 (d) the party against whom enforcement is sought
23 admits in his pleading, testimony or otherwise in court
24 that a contract was made for the sale of a stated quantity
25 of described securities at a defined or stated price.

**§46-8-320. Transfer or pledge within central depository sys-
tem.**

1 (1) In addition to other methods, a transfer, pledge
2 or release of a security or any interest therein may be
3 effected by the making of appropriate entries on the

4 books of a clearing corporation reducing the account of
5 the transferor, pledgor or pledgee and increasing the
6 account of the transferee, pledgee or pledgor by the
7 amount of the obligation, or the number of shares or
8 rights transferred, pledged or released, if the security is
9 shown on the account of a transferor, pledgor or pledgee
10 on the books of the clearing corporation; is subject to
11 the control of the clearing corporation; and

12 (a) if certificated,

13 (i) is in the custody of the clearing corporation, an-
14 other clearing corporation, a custodian bank or a nominee
15 of any of them; and

16 (ii) is in bearer form or indorsed in blank by an
17 appropriate person or registered in the name of the
18 clearing corporation, a custodian bank, or a nominee of
19 any of them; or

20 (b) if uncertificated, is registered in the name of the
21 clearing corporation, another clearing corporation, a
22 custodian bank, or a nominee of any of them.

23 (2) Under this section entries may be made with re-
24 spect to like securities or interests therein as a part of a
25 fungible bulk and may refer merely to a quantity of a
26 particular security without reference to the name of the
27 registered owner, certificate or bond number or the like
28 and, in appropriate cases, may be on a net basis taking
29 into account other transfers, pledges or releases of the
30 same security.

31 (3) A transfer under this section is effective (sec-
32 tion 8-313) and the purchaser acquires the rights of
33 the transferor (section 8-301). A pledge or release
34 under this section is the transfer of a limited interest. If
35 a pledge or the creation of a security interest is intended,
36 the security interest is perfected at the time when both
37 value is given by the pledgee and the appropriate entries
38 are made (section 8-321). A transferee or pledgee under
39 this section may be a bona fide purchaser (section 8-302).

40 (4) A transfer or pledge under this section is not a
41 registration of transfer under part 4.

42 (5) That entries made on the books of the clearing
43 corporation as provided in subsection (1) are not appro-
44 priate does not affect the validity or effect of the entries
45 or the liabilities or obligations of the clearing corpora-
46 tion to any person adversely affected thereby.

**§46-8-321. Enforceability, attachment, perfection and termina-
tion of security interests.**

1 (1) A security interest in a security is enforceable
2 and can attach only if it is transferred to the secured
3 party or a person designated by him pursuant to a pro-
4 vision of section 8-313(1).

5 (2) A security interest so transferred pursuant to
6 agreement by a transferor who has rights in the security
7 to a transferee who has given value is a perfected security
8 interest, but a security interest that has been transferred
9 solely under paragraph (i) of section 8-313(1) becomes
10 unperfected after twenty-one days unless, within that
11 time, the requirements for transfer under any other pro-
12 vision of section 8-313(1) are satisfied.

13 (3) A security interest in a security is subject to the
14 provisions of article nine of this chapter, but:

15 (a) no filing is required to perfect the security in-
16 terest; and

17 (b) no written security agreement signed by the debtor
18 is necessary to make the security interest enforceable,
19 except as otherwise provided in paragraph (h), (i), or
20 (j) of section 8-313(1).

21 The secured party has the rights and duties provided
22 under section 9-207, to the extent they are applicable,
23 whether or not the security is certificated, and, if cer-
24 tificated, whether or not it is in his possession.

25 (4) Unless otherwise agreed, a security interest in a
26 security is terminated by transfer to the debtor or a per-
27 son designated by him pursuant to a provision of section

28 8-313(1). If a security is thus transferred, the security
29 interest, if not terminated, becomes unperfected unless
30 the security is certificated and is delivered to the debtor
31 for the purpose of ultimate sale or exchange or presen-
32 tation, collection, renewal, or registration of transfer. In
33 that case, the security interest becomes unperfected after
34 twenty-one days unless, within that time, the security
35 (or securities for which it has been exchanged) is trans-
36 ferred to the secured party or a person designated by him
37 pursuant to a provision of section 8-313(1).

PART 4. REGISTRATION.

§46-8-401. Duty of issuer to register transfer, pledge or re- lease.

- 1 (1) If a certificated security in registered form is pre-
2 sented to the issuer with a request to register transfer or
3 an instruction is presented to the issuer with a request to
4 register transfer, pledge, or release, the issuer shall regis-
5 ter the transfer, pledge or release as requested if:
 - 6 (a) the security is indorsed or the instruction was
7 originated by the appropriate person or persons (section
8 8-308);
 - 9 (b) reasonable assurance is given that those indorse-
10 ments or instructions are genuine and effective (section
11 8-402);
 - 12 (c) the issuer has no duty as to adverse claims or has
13 discharged the duty (section 8-403);
 - 14 (d) any applicable law relating to the collection of
15 taxes has been complied with; and
 - 16 (e) the transfer, pledge or release is in fact rightful
17 or is to a bona fide purchaser.
- 18 (2) If an issuer is under a duty to register a transfer,
19 pledge or release of a security, the issuer is also liable to
20 the person presenting a certificated security or an instruc-
21 tion for registration or his principal for loss resulting from
22 any unreasonable delay in registration or from failure or
23 refusal to register the transfer, pledge or release.

§46-8-402. Assurance that indorsements and instructions are effective.

1 (1) The issuer may require the following assurance
2 that each necessary indorsement of a certificated se-
3 curity or each instruction (section 8-308) is genuine
4 and effective:

5 (a) in all cases, a guarantee of the signature (section
6 8-312 (1) or (2)) of the person indorsing a certificated
7 security or originating an instruction including, in the
8 case of an instruction, a warranty of the taxpayer iden-
9 tification number or, in the absence thereof, other rea-
10 sonable assurance of identity;

11 (b) if the indorsement is made or the instruction is
12 originated by an agent, appropriate assurance of author-
13 ity to sign;

14 (c) if the indorsement is made or the instruction is
15 originated by a fiduciary, appropriate evidence of ap-
16 pointment or incumbency;

17 (d) if there is more than one fiduciary, reasonable
18 assurance that all who are required to sign have done
19 so; and

20 (e) if the indorsement is made or the instruction
21 is originated by a person not covered by any of the
22 foregoing, assurance appropriate to the case corres-
23 ponding as nearly as may be to the foregoing.

24 (2) A "guarantee of the signature" in subsection (1)
25 means a guarantee signed by or on behalf of a person
26 reasonably believed by the issuer to be responsible.
27 The issuer may adopt standards with respect to respon-
28 sibility if they are not manifestly unreasonable.

29 (3) "Appropriate evidence of appointment or incum-
30 bency" in subsection (1) means:

31 (a) in the case of a fiduciary appointed or qualified
32 by a court, a certificate issued by or under the direction
33 or supervision of that court or an officer thereof and
34 dated within sixty days before the date of presentation
35 for transfer, pledge or release; or

36 (b) in any other case, a copy of a document showing
37 the appointment or a certificate issued by or on behalf
38 of a person reasonably believed by the issuer to be
39 responsible or, in the absence of that document or cer-
40 tificate, other evidence reasonably deemed by the issuer
41 to be appropriate. The issuer may adopt standards with
42 respect to the evidence if they are not manifestly un-
43 reasonable. The issuer is not charged with notice of
44 the contents of any document obtained pursuant to this
45 paragraph (b) except to the extent that the contents
46 relate directly to the appointment or incumbency.

47 (4) The issuer may elect to require reasonable as-
48 surance beyond that specified in this section, but if it
49 does so and, for a purpose other than that specified in
50 subsection 3 (b), both requires and obtains a copy of a
51 will, trust, indenture, articles of copartnership, bylaws
52 or other controlling instrument, it is charged with notice
53 of all matters contained therein affecting the transfer,
54 pledge or release.

§46-8-403. Issuer's duty as to adverse claims.

1 (1) An issuer to whom a certificated security is
2 presented for registration shall inquire into adverse
3 claims if:

4 (a) a written notification of an adverse claim is
5 received at a time and in a manner affording the issuer
6 a reasonable opportunity to act on it prior to the issu-
7 ance of a new, reissued or reregistered certificated
8 security, and the notification identifies the claimant, the
9 registered owner, and the issue of which the security
10 is a part, and provides an address for communications
11 directed to the claimant; or

12 (b) the issuer is charged with notice of an adverse
13 claim from a controlling instrument which it has elected
14 to require under section 8-402 (4).

15 (2) The issuer may discharge any duty of inquiry
16 by any reasonable means, including notifying an ad-
17 verse claimant by registered or certified mail at the
18 address furnished by him or if there be no such address

19 at his residence or regular place of business that the
20 certificated security has been presented for registration
21 of transfer by a named person, and that the transfer
22 will be registered unless within thirty days from the
23 date of mailing the notification, either:

24 (a) an appropriate restraining order, injunction or
25 other process issues from a court of competent juris-
26 diction; or

27 (b) there is filed with the issuer an indemnity bond,
28 sufficient in the issuer's judgment to protect the issuer
29 and any transfer agent, registrar or other agent of the
30 issuer involved from any loss it or they may suffer by
31 complying with the adverse claim.

32 (3) Unless an issuer is charged with notice of an
33 adverse claim from a controlling instrument which it
34 has elected to require under section 8-402 (4) or receives
35 notification of an adverse claim under subsection (1),
36 if a certificated security presented for registration is
37 indorsed by the appropriate person or persons the is-
38 suer is under no duty to inquire into adverse claims.
39 In particular:

40 (a) an issuer registering a certificated security in
41 the name of a person who is a fiduciary or who is
42 described as a fiduciary is not bound to inquire into
43 the existence, extent, or correct description of the fidu-
44 ciary relationship; and thereafter the issuer may assume
45 without inquiry that the newly registered owner
46 continues to be the fiduciary until the issuer receives
47 written notice that the fiduciary is no longer acting as
48 such with respect to the particular security;

49 (b) an issuer registering transfer on an indorsement
50 by a fiduciary is not bound to inquire whether the
51 transfer is made in compliance with a controlling in-
52 strument or with the law of the state having jurisdiction
53 of the fiduciary relationship, including any law requiring
54 the fiduciary to obtain court approval of the transfer;
55 and

56 (c) the issuer is not charged with notice of the con-

57 tents of any court record or file or other recorded or
58 unrecorded document even though the document is in
59 its possession and even though the transfer is made on
60 the indorsement of a fiduciary to the fiduciary himself
61 or to his nominee.

62 (4) An issuer is under no duty as to adverse claims
63 with respect to an uncertificated security except:

64 (a) claims embodied in a restraining order, injunc-
65 tion, or other legal process served upon the issuer if
66 the process was served at a time and in a manner afford-
67 ing the issuer a reasonable opportunity to act on it
68 in accordance with the requirements of subsection (5);

69 (b) claims of which the issuer has received a written
70 notification from the registered owner or the registered
71 pledgee if the notification was received at a time and
72 in a manner affording the issuer a reasonable oppor-
73 tunity to act on it in accordance with the requirements
74 of subsection (5);

75 (c) claims (including restrictions on transfer not im-
76 posed by the issuer) to which the registration of transfer
77 to the present registered owner was subject and
78 were so noted in the initial transaction statement
79 sent to him; and

80 (d) claims as to which an issuer is charged with
81 notice from a controlling instrument it has elected to
82 require under section 8-402 (4).

83 (5) If the issuer of an uncertificated security is under
84 a duty as to an adverse claim, he discharges that duty
85 by:

86 (a) including a notation of the claim in any state-
87 ments sent with respect to the security under sections
88 8-408 (3), (6), and (7); and

89 (b) refusing to register the transfer or pledge of the
90 security unless the nature of the claim does not preclude
91 transfer or pledge subject thereto.

92 (6) If the transfer or pledge of the security is reg-

93 istered subject to an adverse claim, a notation of the
94 claim must be included in the initial transaction state-
95 ment and all subsequent statements sent to the trans-
96 feree and pledgee under section 8-408.

97 (7) Notwithstanding subsections (4) and (5), if an
98 uncertificated security was subject to a registered pledge
99 at the time the issuer first came under a duty as to a
100 particular adverse claim, the issuer has no duty as to
101 that claim if transfer of the security is requested by
102 the registered pledgee or an appropriate person acting
103 for the registered pledgee unless:

104 (a) the claim was embodied in legal process which
105 expressly provides otherwise;

106 (b) the claim was asserted in a written notification
107 from the registered pledgee;

108 (c) the claim was one as to which the issuer was
109 charged with notice from a controlling instrument it
110 required under section 8-402 (4) in connection with the
111 pledgee's request for transfer; or

112 (d) the transfer requested is to the registered owner.

§46-8-404. Liability and nonliability for registration.

1 (1) Except as provided in any law relating to the
2 collection of taxes, the issuer is not liable to the owner,
3 pledgee or any other person suffering loss as a result of
4 the registration of a transfer, pledge or release of a
5 security if:

6 (a) there were on or with a certificated security the
7 necessary indorsements or the issuer had received an
8 instruction originated by an appropriate person (section
9 8-308); and

10 (b) the issuer had no duty as to adverse claims or has
11 discharged the duty (section 8-403).

12 (2) If an issuer has registered a transfer of a certifi-
13 cated security to a person not entitled to it, the issuer on
14 demand shall deliver a like security to the true owner
15 unless:

- 16 (a) the registration was pursuant to subsection (1);
- 17 (b) the owner is precluded from asserting any claim
18 for registering the transfer under section 8-405 (1); or
- 19 (c) the delivery would result in overissue, in which
20 case the issuer's liability is governed by section 8-104.
- 21 (3) If an issuer has improperly registered a transfer,
22 pledge or release of an uncertificated security, the issuer
23 on demand from the injured party shall restore the
24 records as to the injured party to the condition that
25 would have obtained if the improper registration had
26 not been made unless:
- 27 (a) the registration was pursuant to subsection (1); or
- 28 (b) the registration would result in overissue, in which
29 case the issuer's liability is governed by section 8-104.

§46-8-405. Lost, destroyed and stolen certificated securities.

- 1 (1) If a certificated security has been lost, apparently
2 destroyed or wrongfully taken, and the owner fails to
3 notify the issuer of that fact within a reasonable time
4 after he has notice of it and the issuer registers a transfer
5 of the security before receiving notification, the owner
6 is precluded from asserting against the issuer any claim
7 for registering the transfer under section 8-404 or any
8 claim to a new security under this section.
- 9 (2) If the owner of a certificated security claims
10 that the security has been lost, destroyed or wrongfully
11 taken, the issuer shall issue a new certificated security
12 or, at the option of the issuer, an equivalent uncertificated
13 security in place of the original security if the owner:
- 14 (a) so requests before the issuer has notice that the
15 security has been acquired by a bona fide purchaser;
- 16 (b) files with the issuer a sufficient indemnity bond;
17 and
- 18 (c) satisfies any other reasonable requirements im-
19 posed by the issuer.
- 20 (3) If, after the issue of a new certificated or uncer-

21 tificated security, a bona fide purchaser of the original
22 certificated security presents it for registration of trans-
23 fer, the issuer shall register the transfer unless registra-
24 tion would result in overissue, in which event the issuer's
25 liability is governed by section 8-104. In addition to any
26 rights on the indemnity bond, the issuer may recover the
27 new certificated security from the person to whom it was
28 issued or any person taking under him except a bona
29 fide purchaser or may cancel the uncertificated security
30 unless a bona fide purchaser or any person taking under
31 a bona fide purchaser is then the registered owner or
32 registered pledgee thereof.

§46-8-406. Duty of authenticating trustee, transfer agent or registrar.

1 (1) If a person acts as authenticating trustee, transfer
2 agent, registrar, or other agent for an issuer in the
3 registration of transfers of its certificated securities or
4 in the registration of transfers, pledges and releases of its
5 uncertificated securities, in the issue of new securities
6 or in the cancellation of surrendered securities:

7 (a) he is under a duty to the issuer to exercise good
8 faith and due diligence in performing his functions; and

9 (b) with regard to the particular functions he per-
10 forms, he has the same obligations to the holder or owner
11 of a certificated security or to the owner or pledgee of
12 an uncertificated security and has the same rights and
13 privileges as the issuer has in regard to those functions.

14 (2) Notice to an authenticating trustee, transfer agent,
15 registrar or other agent is notice to the issuer with
16 respect to the functions performed by the agent.

§46-8-407. Exchangeability of securities.

1 (1) No issuer is subject to the requirements of this
2 section unless it regularly maintains a system for issuing
3 the class of securities involved under which both cer-
4 tificated and uncertificated securities are regularly issued
5 to the category of owners, which includes the person in
6 whose name the new security is to be registered.

7 (2) Upon surrender of a certificated security with all
8 necessary indorsements and presentation of a written
9 request by the person surrendering the security, the
10 issuer, if he has no duty as to adverse claims or has
11 discharged the duty (section 8-403), shall issue to the
12 person or a person designated by him an equivalent un-
13 certificated security subject to all liens, restrictions, and
14 claims that were noted on the certificated security.

15 (3) Upon receipt of a transfer instruction originated
16 by an appropriate person who so requests, the issuer of
17 an uncertificated security shall cancel the uncertificated
18 security and issue an equivalent certificated security on
19 which must be noted conspicuously any liens and restric-
20 tions of the issuer and any adverse claims (as to which
21 the issuer has a duty under section 8-403(4)) to which the
22 uncertificated security was subject. The certificated se-
23 curity shall be registered in the name of and delivered
24 to:

25 (a) the registered owner, if the uncertificated security
26 was not subject to a registered pledge; or

27 (b) the registered pledgee, if the uncertificated secur-
28 ity was subject to a registered pledge.

§46-8-408. Statements of uncertificated securities.

1 (1) Within two business days after the transfer of an
2 uncertificated security has been registered, the issuer
3 shall send to the new registered owner and, if the security
4 has been transferred subject to a registered pledge, to
5 the registered pledgee a written statement containing:

6 (a) a description of the issue of which the uncertifi-
7 cated security is a part;

8 (b) the number of shares or units transferred;

9 (c) the name and address and any taxpayer identifi-
10 cation number of the new registered owner and, if the
11 security has been transferred subject to a registered
12 pledge, the name and address and any taxpayer identifica-
13 tion number of the registered pledgee;

14 (d) a notation of any liens and restrictions of the
15 issuer and any adverse claims (as to which the issuer has
16 a duty under section 8-403(4)) to which the uncertificated
17 security is or may be subject at the time of registration or
18 a statement that there are none of those liens, restrictions,
19 or adverse claims; and

20 (e) the date the transfer was registered.

21 (2) Within two business days after the pledge of an
22 uncertificated security has been registered, the issuer
23 shall send to the registered owner and the registered
24 pledgee a written statement containing:

25 (a) a description of the issue of which the uncertifi-
26 cated security is a part;

27 (b) the number of shares or units pledged;

28 (c) the name and address and any taxpayer identifi-
29 cation number of the registered owner and the regis-
30 tered pledgee;

31 (d) a notation of any liens and restrictions of the
32 issuer and any adverse claims (as to which the issuer has
33 a duty under section 8-403(4)) to which the uncertificated
34 security is or may be subject at the time of registration or
35 a statement that there are none of those liens, restrictions,
36 or adverse claims; and

37 (e) the date the pledge was registered.

38 (3) Within two business days after the release from
39 pledge of an uncertificated security has been registered,
40 the issuer shall send to the registered owner and the
41 pledgee whose interest was released a written statement
42 containing:

43 (a) a description of the issue of which the uncertifi-
44 cated security is a part;

45 (b) the number of shares or units released from pledge;

46 (c) the name and address and any taxpayer identifi-
47 cation number of the registered owner and the pledgee
48 whose interest was released;

49 (d) a notation of any liens and restrictions of the
50 issuer and any adverse claims (as to which the issuer has
51 a duty under section 8-403 (4)) to which the uncertificated
52 security is or may be subject at the time of registration or
53 a statement that there are none of those liens, restrictions
54 or adverse claims; and

55 (e) the date the release was registered.

56 (4) An "initial transaction statement" is the statement
57 sent to:

58 (a) the new registered owner and, if applicable, to the
59 registered pledgee pursuant to subsection (1);

60 (b) the registered pledgee pursuant to subsection (2);
61 or

62 (c) the registered owner pursuant to subsection (3).

63 Each initial transaction statement shall be signed by
64 or on behalf of the issuer and shall be identified as "ini-
65 tial transaction statement".

66 (5) Within two business days after the transfer of an
67 uncertificated security has been registered, the issuer
68 shall send to the former registered owner and the former
69 registered pledgee, if any, a written statement containing:

70 (a) a description of the issue of which the uncertifi-
71 cated security is a part;

72 (b) the number of shares or units transferred;

73 (c) the name and address and any taxpayer identifi-
74 cation number of the former registered owner and of
75 any former registered pledgee; and

76 (d) the date the transfer was registered.

77 (6) At periodic intervals no less frequent than annually
78 and at any time upon the reasonable written request of
79 the registered owner, the issuer shall send to the regis-
80 tered owner of each uncertificated security a dated
81 written statement containing:

82 (a) a description of the issue of which the uncertificated
83 security is a part;

84 (b) the name and address and any taxpayer identifi-
85 cation number of the registered owner;

86 (c) the number of shares or units of the uncertificated
87 security registered in the name of the registered owner on
88 the date of the statement;

89 (d) the name and address and any taxpayer identifi-
90 cation number of any registered pledgee and the num-
91 ber of shares or units subject to the pledge; and

92 (e) a notation of any liens and restrictions of the
93 issuer and any adverse claims (as to which the issuer has
94 a duty under section 8-403(4)) to which the uncertificated
95 security is or may be subject or a statement that there are
96 none of those liens, restrictions, or adverse claims.

97 (7) At periodic intervals no less frequent than annually
98 and at any time upon the reasonable written request of
99 the registered pledgee, the issuer shall send to the regis-
100 tered pledgee of each uncertificated security a dated
101 written statement containing:

102 (a) a description of the issue of which the uncertifi-
103 cated security is a part;

104 (b) the name and address and any taxpayer identifi-
105 cation number of the registered owner;

106 (c) the name and address and any taxpayer identifi-
107 cation number of the registered pledgee;

108 (d) the number of shares or units subject to the pledge;
109 and

110 (e) a notation of any liens and restrictions of the
111 issuer and any adverse claims (as to which the issuer has
112 a duty under section 8-403(4)) to which the uncertificated
113 security is or may be subject or a statement that there are
114 none of those liens, restrictions, or adverse claims.

115 (8) If the issuer sends the statements described in
116 subsections (6) and (7) at periodic intervals no less fre-
117 quent than quarterly, the issuer is not obliged to send
118 additional statements upon request unless the owner or

119 pledgee requesting them pays to the issuer the reasonable
120 cost of furnishing them.

121 (9) Each statement sent pursuant to this section must
122 bear a conspicuous legend reading substantially as fol-
123 lows: "This statement is merely a record of the rights of
124 the addressee as of the time of its issuance. Delivery of
125 this statement, of itself, confers no rights on the recipient.
126 This statement is neither a negotiable instrument nor a
127 security."

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

- §46-9-103. Perfection of security interests in multiple state transactions.
- §46-9-105. Definitions and index of definitions.
- §46-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.
- §46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.
- §46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.
- §46-9-305. When possession by secured party perfects security interest without filing.
- §46-9-309. Protection of purchasers of instruments, documents and securities.
- §46-9-312. Priorities among conflicting security interests in the same collateral.

§46-9-103. Perfection of security interests in multiple state transactions.

1 (1) Documents, instruments and ordinary goods.

2 (a) This subsection applies to documents and instru-
3 ments and to goods other than those covered by a cer-
4 tificate of title described in subsection (2), mobile goods
5 described in subsection (3), and minerals described in
6 subsection (5).

7 (b) Except as otherwise provided in this subsection,
8 perfection and the effect of perfection or nonperfection
9 of a security interest in collateral are governed by the
10 law of the jurisdiction where the collateral is when the
11 last event occurs on which is based the assertion that
12 the security interest is perfected or unperfected.

13 (c) If the parties to a transaction creating a purchase
14 money security interest in goods in one jurisdiction
15 understand at the time that the security interest attaches
16 that the goods will be kept in another jurisdiction, then
17 the law of the other jurisdiction governs the perfection
18 and the effect of perfection or nonperfection of the
19 security interest from the time it attaches until thirty
20 days after the debtor receives possession of the goods
21 and thereafter if the goods are taken to the other juris-
22 diction before the end of the thirty-day period.

23 (d) When collateral is brought into and kept in this
24 state while subject to a security interest perfected under
25 the law of the jurisdiction from which the collateral was
26 removed, the security interest remains perfected, but if
27 action is required by part 3 of this article to perfect the
28 security interest:

29 (i) if the action is not taken before the expiration of
30 the period of perfection in the other jurisdiction or the
31 end of four months after the collateral is brought into
32 this state, whichever period first expires, the security
33 interest becomes unperfected at the end of that period
34 and is thereafter deemed to have been unperfected as
35 against a person who became a purchaser after removal;

36 (ii) if the action is taken before the expiration of
37 the period specified in subparagraph (i), the security
38 interest continues perfected thereafter;

39 (iii) for the purpose of priority over a buyer of con-
40 sumer goods (subsection (2) of section 9-307), the period
41 of the effectiveness of a filing in the jurisdiction from
42 which the collateral is removed is governed by the rules
43 with respect to perfection in subparagraphs (i) and
44 (ii).

45 (2) Certificate of title.

46 (a) This subsection applies to goods covered by a
47 certificate of title issued under a statute of this state or
48 of another jurisdiction under the law of which indication
49 of a security interest on the certificate is required as a
50 condition of perfection.

51 (b) Except as otherwise provided in this subsection,
52 perfection and, the effect of perfection or nonperfection
53 of the security interest are governed by the law (includ-
54 ing the conflict of laws rules) of the jurisdiction issuing
55 the certificate until four months after the goods are
56 removed from that jurisdiction and thereafter until the
57 goods are registered in another jurisdiction, but in any
58 event not beyond surrender of the certificate. After the
59 expiration of that period, the goods are not covered by
60 the certificate of title within the meaning of this section.

61 (c) Except with respect to the rights of a buyer de-
62 scribed in the next paragraph, a security interest, per-
63 fected in another jurisdiction otherwise than by notation
64 on a certificate of title, in goods brought into this state
65 and thereafter covered by a certificate of title issued by
66 this state is subject to the rules stated in paragraph (d)
67 of subsection (1).

68 (d) If goods are brought into this state while a
69 security interest therein is perfected in any manner
70 under the law of the jurisdiction from which the goods
71 are removed and a certificate of title is issued by this
72 state and the certificate does not show that the goods
73 are subject to the security interest or that they may be
74 subject to security interests not shown on the certificate,
75 the security interest is subordinate to the rights of a
76 buyer of the goods who is not in the business of selling
77 goods of that kind to the extent that he gives value and
78 receives delivery of the goods after issuance of the
79 certificate and without knowledge of the security
80 interest.

81 (3) Accounts, general intangibles and mobile goods.

82 (a) This subsection applies to accounts (other than
83 an account described in subsection (5) on minerals)
84 and general intangibles (other than uncertificated se-
85 curities) and to goods which are mobile and which are
86 of a type normally used in more than one jurisdiction,
87 such as motor vehicles, trailers, rolling stock, airplanes,
88 shipping containers, road building and construction ma-

89 chinery and commercial harvesting machinery and the
90 like, if the goods are equipment or are inventory leased
91 or held for lease by the debtor to others, and are not
92 covered by a certificate of title described in subsection
93 (2).

94 (b) The law (including the conflict of laws rules) of
95 the jurisdiction in which the debtor is located governs
96 the perfection and the effect of perfection or nonperfec-
97 tion of the security interest.

98 (c) If, however, the debtor is located in a jurisdiction
99 which is not a part of the United States, and which does
100 not provide for perfection of the security interest by
101 filing or recording in that jurisdiction, the law of the
102 jurisdiction in the United States in which the debtor
103 has its major executive office in the United States
104 governs the perfection and the effect of perfection or
105 nonperfection of the security interest through filing. In
106 the alternative, if the debtor is located in a jurisdiction
107 which is not a part of the United States or Canada and
108 the collateral is accounts or general intangibles for
109 money due or to become due, the security interest may
110 be perfected by notification to the account debtor. As
111 used in this paragraph, "United States" includes its
112 territories and possessions and the Commonwealth of
113 Puerto Rico.

114 (d) A debtor shall be deemed located at his place of
115 business if he has one, at his chief executive office if he
116 has more than one place of business, otherwise at his
117 residence. If, however, the debtor is a foreign air carrier
118 under the Federal Aviation Act of 1958, as amended, it
119 shall be deemed located at the designated office of the
120 agent upon whom service of process may be made on
121 behalf of the foreign air carrier.

122 (e) A security interest perfected under the law of
123 the jurisdiction of the location of the debtor is perfected
124 until the expiration of four months after a change of the
125 debtor's location to another jurisdiction, or until perfec-
126 tion would have ceased by the law of the first jurisdic-

127 tion, whichever period first expires. Unless perfected
128 in the new jurisdiction before the end of that period, it
129 becomes unperfected thereafter and is deemed to have
130 been unperfected as against a person who became a
131 purchaser after the change.

132 (4) Chattel paper.

133 The rules stated for goods in subsection (1) apply to
134 a possessory security interest in chattel paper. The rules
135 stated for accounts in subsection (3) apply to a non-
136 possessory security interest in chattel paper, but the
137 security interest may not be perfected by notification to
138 the account debtor.

139 (5) Minerals.

140 Perfection and the effect of perfection or nonperfection
141 of a security interest which is created by a debtor who
142 has an interest in minerals or the like (including oil
143 and gas) before extraction and which attaches thereto
144 as extracted, or which attaches to an account resulting
145 from the sale thereof at the wellhead or minehead are
146 governed by the law (including the conflict of laws
147 rules) of the jurisdiction wherein the wellhead or mine-
148 head is located.

149 (6) Uncertificated securities.

150 The law (including the conflict of laws rules) of the
151 jurisdiction of organization of the issuer governs the
152 perfection and the effect of perfection or nonperfection
153 of a security interest in uncertificated securities.

§46-9-105. Definitions and index of definitions.

1 (1) In this article unless the context otherwise re-
2 quires:

3 (a) "Account debtor" means the person who is obligat-
4 ed on an account, chattel paper, or general intangible;

5 (b) "Chattel paper" means a writing or writings which
6 evidence both a monetary obligation and a security
7 interest in or a lease of specific goods, but a charter or

8 other contract involving the use or hire of a vessel is
9 not chattel paper. When a transaction is evidenced both
10 by such a security agreement or a lease and by an in-
11 strument or a series of instruments, the group of writings
12 taken together constitutes chattel paper;

13 (c) "Collateral" means the property subject to a
14 security interest, and includes accounts, and chattel paper
15 which have been sold;

16 (d) "Debtor" means the person who owes payment or
17 other performance of the obligation secured, whether
18 or not he owns or has rights in the collateral, and in-
19 cludes the seller of accounts, or chattel paper. Where
20 the debtor and the owner of the collateral are not the
21 same person, the term "debtor" means the owner of the
22 collateral in any provision of the article dealing with the
23 collateral, the obligor in any provision dealing with the
24 obligation, and may include both where the context so
25 requires;

26 (e) "Deposit account" means a demand, time, savings,
27 passbook or like account maintained with a bank, savings
28 and loan association, credit union or like organization,
29 other than an account evidenced by a certificate of
30 deposit;

31 (f) "Document" means document of title as defined
32 in the general definitions of article 1 (section 1-201),
33 and a receipt of the kind described in subsection (2) of
34 section 7-201;

35 (g) "Encumbrance" includes real estate mortgages and
36 other liens on real estate and all other rights in real
37 estate that are not ownership interests;

38 (h) "Goods" includes all things which are moveable
39 at the time the security interest attaches or which are
40 fixtures (section 9-313), but does not include money,
41 documents, instruments, accounts, chattel paper, general
42 intangibles, or minerals or the like (including oil and gas)
43 before extraction. "Goods" also includes standing timber
44 which is to be cut and removed under a conveyance or

45 contract for sale, the unborn young of animals, and
46 growing crops;

47 (i) "Instrument" means a negotiable instrument (de-
48 fined in section 3-104), or a certificated security (defined
49 in section 8-102) or any other writing which evidences
50 a right to the payment of money and is not itself a
51 security agreement or lease and is of a type which is in
52 ordinary course of business transferred by delivery with
53 any necessary endorsement or assignment;

54 (j) "Mortgage" means a consensual interest created
55 by a real estate mortgage, a trust deed on real estate, or
56 the like;

57 (k) An advance is made "pursuant to commitment" if
58 the secured party has bound himself to make it, whether
59 or not a subsequent event of default or other event not
60 within his control has relieved or may relieve him from
61 his obligation;

62 (l) "Security agreement" means an agreement which
63 creates or provides for a security interest;

64 (m) "Secured party" means a lender, seller or other
65 person in whose favor there is a security interest, in-
66 cluding a person to whom accounts or chattel paper have
67 been sold. When the holders of obligations issued under
68 an indenture of trust, equipment trust agreement or the
69 like are represented by a trustee or other person, the
70 representative is the secured party;

71 (n) "Transmitting utility" means any person primarily
72 engaged in the railroad, street railway or trolley bus
73 business, the electric or electronics communications
74 transmission business, the transmission of goods by pipe-
75 line, or the transmission or the production and trans-
76 mission of electricity, steam, gas or water, or the provi-
77 sion of sewer service.

78 (2) Other definitions applying to this article and the
79 section in which they appear are:

80 "Account." Section 9-106.

81 "Attach." Section 9-203.

- 82 "Construction mortgage." Section 9-313(1).
83 "Consumer goods." Section 9-109(1).
84 "Equipment." Section 9-109(2).
85 "Farm products." Section 9-109(3).
86 "Fixture." Section 9-313.
87 "Fixture filing." Section 9-313.
88 "General intangibles." Section 9-106.
89 "Inventory." Section 9-109(4).
90 "Lien creditor." Section 9-301(3).
91 "Proceeds." Section 9-306(1).
92 "Purchase money security interest." Section 9-107.
93 "United States." Section 9-103.
- 94 (3) The following definitions in other articles apply
95 to this article:
- 96 "Check." Section 3-104.
97 "Contract for sale." Section 2-106.
98 "Holder in due course." Section 3-302.
99 "Note." Section 3-104.
100 "Sale." Section 2-106.
- 101 (4) In addition, article 1 contains general definitions
102 and principles of construction and interpretation ap-
103 plicable throughout this article.

**§46-9-203. Attachment and enforceability of security interest;
proceeds; formal requisites.**

- 1 (1) Subject to the provisions of section 4-208 on the
2 security interest of a collecting bank, section 8-321 on
3 security interests in securities and section 9-113 on a
4 security interest arising under the article on sales, a
5 security interest is not enforceable against the debtor
6 or third parties with respect to the collateral and does
7 not attach unless:
- 8 (a) the collateral is in the possession of the secured
9 party, pursuant to agreement, or the debtor has signed
10 a security agreement which contains a description of
11 the collateral and in addition, when the security in-
12 terest covers crops growing or to be grown or timber
13 to be cut, a description of the land concerned;
- 14 (b) value has been given; and

- 15 (c) the debtor has rights in the collateral.
- 16 (2) A security interest attaches when it becomes en-
17 forceable against the debtor with respect to the collat-
18 eral. Attachment occurs as soon as all of the events
19 specified in subsection (1) have taken place unless
20 explicit agreement postpones the time of attaching.
- 21 (3) Unless otherwise agreed a security agreement
22 gives the secured party the rights to proceeds provided
23 by section 9-306.
- 24 (4) A transaction may be subject to this article and
25 also to article 7A of chapter 47 relating to small loans
26 and in case of conflict between the provisions of this
27 article and said article 7A or any other such statute,
28 the provisions of said article 7A or such other statute
29 control. Failure to comply with any applicable statute
30 has only the effect which is specified therein.

**§46-9-302. When filing is required to perfect security interest;
security interests to which filing provisions of
this article do not apply.**

- 1 (1) A financing statement must be filed to perfect
2 all security interests except the following:
- 3 (a) a security interest in collateral in possession of
4 the secured party under section 9-305;
- 5 (b) a security interest temporarily perfected in in-
6 struments or documents without delivery under section
7 9-304 or in proceeds for a 10-day period under section
8 9-306;
- 9 (c) a security interest created by an assignment of a
10 beneficial interest in a trust or a decedent's estate;
- 11 (d) a purchase money security interest in consumer
12 goods; but filing is required for a motor vehicle required
13 to be registered; and fixture filing is required for prior-
14 ity over conflicting interests in fixtures to the extent
15 provided in section 9-313;
- 16 (e) an assignment of accounts which does not alone
17 or in conjunction with other assignments to the same

18 assignee transfer a significant part of the outstanding
19 accounts of the assignor;

20 (f) a security interest of a collecting bank (section
21 4-208) or in securities (section 8-321) or arising under
22 the article on sales (see section 9-113) or covered in
23 subsection (3) of this section;

24 (g) an assignment for the benefit of all the creditors
25 of the transferor, and subsequent transfers by the as-
26 signee thereunder.

27 (2) If a secured party assigns a perfected security
28 interest, no filing under this article is required in order
29 to continue the perfected status of the security interest
30 against creditors of and transferees from the original
31 debtor.

32 (3) The filing of a financing statement otherwise re-
33 quired by this article is not necessary or effective to
34 perfect a security interest in property subject to:

35 (a) a statute or treaty of the United States which
36 provides for a national or international registration or
37 a national or international certificate of title or which
38 specifies a place of filing different from that specified
39 in this article for filing of the security interest; or

40 (b) the following statute of this state: Chapter seven-
41 teen-a of this code; but during any period in which
42 collateral is inventory held for sale by a person who
43 is in the business of selling goods of that kind, the filing
44 provisions of this article (part 4) apply to a security
45 interest in that collateral created by him as debtor; or

46 (c) a certificate of title statute of another jurisdiction
47 under the law of which indication of a security interest
48 on the certificate is required as a condition of perfection
49 (subsection (2) of section 9-103).

50 (4) Compliance with a statute or treaty described in
51 subsection (3) is equivalent to the filing of a financing
52 statement under this article, and a security interest in
53 property subject to the statute or treaty can be per-
54 fected only by compliance therewith except as provided

55 in section 9-103 on multiple state transactions. Duration
56 and renewal of perfection of a security interest per-
57 fected by compliance with the statute or treaty are
58 governed by the provisions of the statute or treaty; in
59 other respects the security interest is subject to this
60 article.

**§46-9-304. Perfection of security interest in instruments,
documents, and goods covered by documents;
perfection by permissive filing; temporary per-
fection without filing or transfer of possession.**

1 (1) A security interest in chattel paper or negotiable
2 documents may be perfected by filing. A security in-
3 terest in money or instruments (other than certificated
4 securities or instruments which constitute part of chattel
5 paper) can be perfected only by the secured party's
6 taking possession, except as provided in subsections (4)
7 and (5) of this section and subsections (2) and (3) of
8 section 9-306 on proceeds.

9 (2) During the period that goods are in the possession
10 of the issuer of a negotiable document therefor, a se-
11 curity interest in the goods is perfected by perfecting a
12 security interest in the document, and any security
13 interest in the goods otherwise perfected during such
14 period is subject thereto.

15 (3) A security interest in goods in the possession of
16 a bailee other than one who has issued a negotiable
17 document therefor is perfected by issuance of a docu-
18 ment in the name of the secured party or by the bailee's
19 receipt of notification of the secured party's interest or
20 by filing as to the goods.

21 (4) A security interest in instruments (other than
22 certificated securities) or negotiable documents is per-
23 fected without filing or the taking of possession for a
24 period of 21 days from the time it attaches to the extent
25 that it arises for new value given under a written se-
26 curity agreement.

27 (5) A security interest remains perfected for a period
28 of 21 days without filing where a secured party having

29 a perfected security interest in an instrument (other
30 than a certificated security), a negotiable document or
31 goods in possession of a bailee other than one who has
32 issued a negotiable document therefor:

33 (a) makes available to the debtor the goods or docu-
34 ments representing the goods for the purpose of ultimate
35 sale or exchange or for the purpose of loading, unloading,
36 storing, shipping, transshipping, manufacturing, pro-
37 cessing or otherwise dealing with them in a man-
38 ner preliminary to their sale or exchange, but priority
39 between conflicting security interests in the goods is
40 subject to subsection (3) of section 9-312; or

41 (b) delivers the instrument to the debtor for the
42 purpose of ultimate sale or exchange or of presentation,
43 collection, renewal or registration of transfer.

44 (6) After the 21-day period in subsections (4) and
45 (5) perfection depends upon compliance with applicable
46 provisions of this article.

§46-9-305. When possession by secured party perfects security interest without filing.

1 A security interest in letters of credit and advices of
2 credit (subsection (2) (a) of section 5-116), goods, in-
3 struments (other than certificated securities), money,
4 negotiable documents or chattel paper may be perfected
5 by the secured party's taking possession of the collateral.
6 If such collateral other than goods covered by a nego-
7 tiable document is held by a bailee, the secured party is
8 deemed to have possession from the time the bailee
9 receives notification of the secured party's interest. A
10 security interest is perfected by possession from the
11 time possession is taken without relation back and con-
12 tinues only so long as possession is retained, unless other-
13 wise specified in this article. The security interest may
14 be otherwise perfected as provided in this article before
15 or after the period of possession by the secured party.

§46-9-309. Protection of purchasers of instruments, documents and securities.

1 Nothing in this article limits the rights of a holder

2 in due course of a negotiable instrument (section 3-302) or
3 a holder to whom a negotiable document of title has been
4 duly negotiated (section 7-501) or a bona fide purchaser of
5 a security (section 8-302) and such holders or purchasers
6 take priority over an earlier security interest even
7 though perfected. Filing under this article does not con-
8 stitute notice of the security interest to such holders or
9 purchasers.

§46-9-312. Priorities among conflicting security interests in the same collateral.

1 (1) The rules of priority stated in other sections of
2 this part and in the following sections shall govern when
3 applicable: Section 4-208 with respect to the security in-
4 terests of collecting banks in items being collected,
5 accompanying documents and proceeds; section 9-103 on
6 security interests related to other jurisdictions; section
7 9-114 on consignments.

8 (2) A perfected security interest in crops for new
9 value given to enable the debtor to produce the crops
10 during the production season and given not more than
11 three months before the crops become growing crops by
12 planting or otherwise takes priority over an earlier per-
13 fected security interest to the extent that such earlier
14 interest secures obligations due more than six months
15 before the crops become growing crops by planting or
16 otherwise, even though the person giving new value had
17 knowledge of the earlier security interest.

18 (3) A perfected purchase money security interest in
19 inventory has priority over a conflicting security in-
20 terest in the same inventory and also has priority in iden-
21 tifiable cash proceeds received on or before the delivery
22 of the inventory to a buyer if:

23 (a) the purchase money security interest is perfected
24 at the time the debtor receives possession of the inven-
25 tory; and

26 (b) the purchase money secured party gives notifica-
27 tion in writing to the holder of the conflicting security
28 interest if the holder had filed a financing statement

29 covering the same types of inventory (i) before the date
30 of the filing made by the purchase money secured party,
31 or (ii) before the beginning of the 21-day period
32 where the purchase money security interest is temporarily
33 perfected without filing or possession (subsection (5) of
34 section 9-304); and

35 (c) the holder of the conflicting security interest
36 receives the notification within five years before the
37 debtor receives possession of the inventory; and

38 (d) the notification states that the person giving the
39 notice has or expects to acquire a purchase money secur-
40 ity interest in inventory of the debtor, describing such
41 inventory by item or type.

42 (4) A purchase money security interest in collateral
43 other than inventory has priority over a conflicting se-
44 curity interest in the same collateral or its proceeds if
45 the purchase money security interest is perfected at the
46 time the debtor receives possession of the collateral or
47 within ten days thereafter.

48 (5) In all cases not governed by other rules stated in
49 this section (including cases of purchase money security
50 interests which do not qualify for the special priorities
51 set forth in subsections (3) and (4) of this section),
52 priority between conflicting security interests in the same
53 collateral shall be determined according to the following
54 rules:

55 (a) Conflicting security interests rank according to
56 priority in time of filing or perfection. Priority dates
57 from the time a filing is first made covering the collateral
58 or the time the security interest is first perfected, which-
59 ever is earlier, provided that there is no period thereafter
60 when there is neither filing nor perfection.

61 (b) So long as conflicting security interests are un-
62 perfected, the first to attach has priority.

63 (6) For the purposes of subsection (5) a date of filing
64 or perfection as to collateral is also a date of filing or
65 perfection as to proceeds.

66 (7) If future advances are made while a security
67 interest is perfected by filing, the taking of possession, or
68 under section 8-321 on securities, the security interest has
69 the same priority for the purposes of subsection (5) with
70 respect to the future advances as it does with respect to
71 the first advance. If a commitment is made before or
72 while the security interest is so perfected, the security in-
73 terest has the same priority with respect to advances made
79 pursuant thereto. In other cases a perfected security inter-
75 est has priority from the date the advance is made.

CHAPTER 117

(S. B .551—By Mr. Harman)

[Passed March 8, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three, relating to the establishment of a veterans' cemetery by the department of veterans affairs; establishment of a national cemetery or expansion of an existing national cemetery.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. STATE CEMETERY FOR VETERANS.

§9A-3-1. Department empowered to establish and maintain cemetery.

§9A-3-2. Department to promulgate rules and regulations and make facilities available.

§9A-3-1. Department empowered to establish and maintain cemetery.

1 The department of veterans affairs is hereby em-
2 powered to establish and maintain a state veterans'

3 cemetery which shall be centrally located within the
4 state and easily accessible. Interment in the state vet-
5 erans' cemetery shall be available to all persons who are
6 residents and citizens of the state and who have served
7 in the armed forces of the United States, including the
8 army, air force, navy, marine corps and coast guard, and
9 who have a discharge other than dishonorable.

10 Further, the department of veterans affairs is hereby
11 granted authority to acquire and transfer real property
12 to the United States veterans administration contingent
13 upon the utilization of such real property by that federal
14 agency for the establishment of a new national cemetery
15 or for the expansion of an existing national cemetery.

16 For the purposes set forth in this article the depart-
17 ment of veterans affairs is hereby authorized to receive
18 funds by gift, grant, appropriation or by any other means
19 from any source available or to become available.

**§9A-3-2. Department to promulgate rules and regulations and
make facilities available.**

1 The department shall promulgate rules and regula-
2 tions not inconsistent herewith for the administration of
3 the veterans' cemetery and shall make available to all
4 persons eligible for the benefit thereof the facilities at
5 such cemetery upon request.

CHAPTER 118

(S. B. 202—By Mr. Jones)

[Passed March 10, 1979; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and nineteen, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the filing of a birth certificate in the district where the birth occurs and in the district where the mother resides; and requiring the filing of a death

certificate in the district where the death occurs and in the district where the deceased resided.

Be it enacted by the Legislature of West Virginia:

That sections twelve and nineteen, article 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 5. VITAL STATISTICS.

§16-5-12. Birth registration generally.

§16-5-19. Death registration.

§16-5-12. Birth registration generally.

1 (a) A certificate of birth for each live birth which
2 occurs in this state shall be filed with the local registrar
3 of the district in which the birth occurs within seven
4 days after such birth and shall be registered by such
5 registrar if it has been completed and filed in accordance
6 with this section. When a birth occurs in a moving con-
7 veyance, a birth certificate shall be filed in the district
8 in which the child is first removed from the conveyance.
9 When a birth occurs in a district other than where the
10 mother resides, a birth certificate shall be filed in the
11 district in which the child is born and in the district in
12 which the mother resides.

13 (b) When a birth occurs in an institution, the person
14 in charge of the institution or his designated representa-
15 tive shall obtain the personal data, prepare the certificate,
16 secure the signatures required for the certificate and
17 file it with the local registrar. The physician in attend-
18 ance shall certify to the facts of birth and provide the
19 medical information required for the certificate within
20 five days after the birth.

21 (c) When a birth occurs outside an institution, the
22 certificate shall be prepared and filed by one of the
23 following in the indicated order of priority:

24 (1) The physician in attendance at or immediately
25 after the birth, or in the absence of such a person,

26 (2) Any other person in attendance at or immediately
27 after the birth, or in the absence of such a person,

28 (3) The father, the mother, or, in the absence of the
29 father and the inability of the mother, the person in
30 charge of the premises where the birth occurred.

31 (d) If the mother was married either at the time of
32 conception or birth, the name of the husband shall be
33 entered on the certificate as the father of the child
34 unless paternity has been determined otherwise by a
35 court of competent jurisdiction, in which case the name
36 of the father as determined by the court shall be entered.

37 (e) If the mother was not married either at the time of
38 conception or birth, the name of the father shall not be
39 entered on the certificate of birth without the written
40 consent of the mother and of the person to be named as
41 the father unless a determination of paternity has been
42 made by a court of competent jurisdiction, in which case
43 the name of the father as determined by the court shall
44 be entered.

45 (f) Either of the parents of the child shall sign the
46 certificate of live birth to attest to the accuracy of the
47 personal data entered thereon, in time to permit its filing
48 within the seven days prescribed above.

49 (g) In order that each county may have a complete
50 record of the births occurring in said county, the local
51 registrar shall transmit each month to the county clerk
52 of his county the copies of the certificates of all births
53 occurring in said county, from which copies the clerk
54 shall compile a record of such births and shall enter the
55 same in a systematic and orderly way in a well-bound
56 register of births, which said register shall be a public
57 record: *Provided*, That such copies and register shall
58 not state that any child was either legitimate or illegit-
59 imate. The form of said register of births shall be pre-
60 scribed by the state registrar of vital statistics.

§16-5-19. Death registration.

1 (a) A death certificate for each death which occurs in

2 this state shall be filed with the local registrar of the
3 registration district in which the death occurs within
4 three days after such death, and prior to removal of the
5 body from the state, and shall be registered by such
6 registrar if it has been completed and filed in accordance
7 with this section: *Provided, That*

8 (1) If the place of death is unknown, a death certifi-
9 cate shall be filed in the registration district in which a
10 dead body is found within three days after the finding;

11 (2) If death occurs in a moving conveyance, a death
12 certificate shall be filed in the registration district in
13 which the dead body is first removed from such con-
14 veyance; and

15 (3) If the death occurs in a district other than where
16 the deceased resided, a death certificate shall be filed in
17 the registration district in which the death occurred and
18 in the district in which the deceased resided.

19 (b) The funeral director or person acting for him who
20 first assumes custody of a dead body shall file the death
21 certificate. He shall obtain the necessary personal data
22 from the next of kin or the best qualified person or source
23 available. He shall obtain the medical certification of
24 the cause of death from the person responsible for making
25 such certification.

26 (c) The medical certification shall be completed and
27 signed within twenty-four hours after death by the
28 physician in charge of the patient's care for the illness
29 or condition which results in death except when inquiry
30 is required pursuant to chapter sixty-one, article twelve
31 or other applicable provision of this code.

32 (d) When death occurs without medical attendance
33 and inquiry is not required pursuant to chapter sixty-one,
34 article twelve or other applicable provisions of this code,
35 the local health officer shall investigate the cause of
36 death and complete and sign the medical certification
37 within twenty-four hours after receiving notice of the
38 death.

39 (e) When death occurs in a manner subject to investiga-
40 tion, the coroner or other officer or official charged with
41 the legal duty of making such investigation shall investi-
42 gate the cause of death and shall complete and sign the
43 medical certification within twenty-four hours after
44 making determination of the cause of death.

45 (f) In order that each county may have a complete
46 record of the deaths occurring in said county, the local
47 registrar shall transmit each month to the county clerk
48 of his county a copy of the certificates of all deaths
49 occurring in said county, and if any person shall die in
50 a county other than that county within the state in
51 which such person last resided prior to death, then the
52 state registrar shall, if possible, also furnish a copy of
53 such death certificate to the clerk of the county com-
54 mission of the county wherein such person last resided,
55 from which copies the clerk shall compile a record of
56 such deaths and shall enter the same in a systematic and
57 orderly way in a well-bound register of deaths for that
58 county, which such register shall be a public record.
59 The form of said death register shall be prescribed by
60 the state registrar of vital statistics.

CHAPTER 119

(S. B. 99—By Mr. Huffman)

[Passed March 10, 1979; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two; to amend and reenact section nineteen, article three, chapter twelve of said code; and to amend and reenact section three, article five, chapter twenty-one of said code, all relating to the direct deposit of certain governmental employees' compensation into designated accounts in financial institutions; prohibiting general

orders for payrolls; providing certain exceptions with respect to such prohibition; and relating to payment of wages by employers other than railroads and to assignments of wages.

Be it enacted by the Legislature of West Virginia:

That article seven, 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 twenty-two; that section nineteen, article three, chapter twelve of said code be amended and reenacted; and that section three, article five, chapter twenty-one of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.
12. Public Moneys and Securities.
21. Labor.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-22. Direct deposit of county officials' and employees' compensation into designated accounts in financial institutions.

- 1 Notwithstanding any other provision of this article, a
- 2 county commission, board of education, or governing
- 3 body of a municipal corporation may, upon the written
- 4 request of any of their respective employees, deposit that
- 5 employee's compensation directly into a demand or time
- 6 account in a bank, credit union or savings and loan
- 7 institution. The written request shall specifically identify
- 8 the employee, the financial institution, the type of ac-
- 9 count and the account number.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.**

§12-3-19. General order by county commission, board of education or governing body of a municipal corporation prohibited.

1 It shall be unlawful for any county commission, board
2 of education or the governing body of a municipal cor-
3 poration, or other body charged with the administration
4 of the fiscal affairs of any county, school district, inde-
5 pendent school district or municipality, to issue any
6 general order for a payroll, or to any person to be dis-
7 bursed or distributed by him to those who have per-
8 formed the services or furnished the materials for which
9 payment is to be made, but in all such cases the order
10 shall be made payable to the persons lawfully entitled to
11 such payment: *Provided*, That a county commission,
12 board of education or governing body of a municipal
13 corporation may, upon the written request of any of their
14 respective employees, issue a general order for a payroll
15 to a bank, credit union or savings and loan institution
16 for deposit to that employee's demand or time account.
17 The written request shall specifically identify the em-
18 ployee, the financial institution, the type of account and
19 the account number.

CHAPTER 21. LABOR.**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

1 Every person, firm or corporation doing business in
2 this state, except railroad companies as provided in sec-
3 tion one of this article, shall settle with its employees at
4 least once in every two weeks, unless otherwise provided
5 by special agreement, and pay them the wages due, less
6 authorized deductions and authorized wage assignments,
7 for their work or services in lawful money of the United
8 States, or by the cash order as described and required in
9 the next succeeding section of this article or by any
10 method of depositing immediately available funds in an

11 employee's demand or time account in a bank, credit
12 union or savings and loan institution that may be agreed
13 upon in writing between the employee and such person,
14 firm or corporation, which agreement shall specifically
15 identify the employee, the financial institution, the type
16 of account and the account number: *Provided*, That
17 nothing herein contained shall be construed in a manner
18 to require any person, firm or corporation to pay em-
19 ployees by depositing funds in a financial institution:
20 *Provided, however*, That if, at any time of payment, any
21 employee shall be absent from his regular place of labor
22 and shall not receive his wages through a duly authorized
23 representative, he shall be entitled to such payment at
24 any time thereafter upon demand upon the proper pay-
25 master at the place where such wages are usually paid
26 and where the next pay is due.

27 Nothing herein contained shall affect the right of an
28 employee to assign part of his claim against his employer
29 except as hereinafter provided.

30 No assignment of or order for future wages shall be
31 valid for a period exceeding one year from the date of
32 such assignment or order. Such assignment or order shall
33 be acknowledged by the party making the same before
34 a notary public or other officer authorized to take
35 acknowledgments, and such order or assignment shall
36 specify thereon the total amount due and collectible by
37 virtue of the same and three fourths of the periodical
38 earnings or wages of the assignor shall at all times be
39 exempt from such assignment or order and no assignment
40 or order shall be valid which does not so state upon its
41 face: *Provided*, That no such order or assignment
42 shall be valid unless the written acceptance of the em-
43 ployer of the assignor to the making thereof, is endorsed
44 thereon: *Provided, however*, That nothing herein contained
45 shall be construed as affecting the right of employer and
46 employees to agree between themselves as to deductions
47 to be made from the payroll of employees: *Provided*
48 *further*, That nothing herein contained shall be construed
49 as affecting the right of teachers who have elected to
50 become members of a county teachers' retirement system,

51 as permitted by section two, article seven-a, chapter
52 thirty-six, acts of the Legislature of West Virginia, regular
53 session, one thousand nine hundred forty-one, to make
54 assignments of or orders for future wages to such systems
55 for periods coextensive with the term of their contracts
56 of employment.

CHAPTER 120

(Com. Sub. for S. B. 539—By Mr. Palumbo and Mr. Gilligan)

[Passed March 9, 1979; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the governor's commission on Willow Island; continuing the existence of such commission; making certain legislative findings; declaring purposes and intent with respect to said commission; providing for the composition of the commission and the appointment of members; permitting certain members of the Legislature to serve on said commission; establishing the powers and duties of the commission; authorizing the commission to examine witnesses; empowering the commission to administer oaths and to issue subpoenas and subpoenas duces tecum; outlining the duties of the circuit courts with respect to the enforcement of said subpoenas or subpoenas duces tecum; providing for the employment of legal, technical, investigative and other personnel to assist the commission; providing for the compensation and expenses of the members of the commission and the method of payment; permitting the commission to hold executive sessions in certain cases; granting immunity to members of the commission in certain instances; providing that certain findings, reports and evidence shall be privileged; providing for reports to be made by the commission; and relating to the interpretation of the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand

nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty, to read as follows:

ARTICLE 20. THE GOVERNOR'S COMMISSION ON WILLOW ISLAND.

- §5-20-1. Legislative findings, purposes and intent.
- §5-20-2. Governor's commission on Willow Island continued; composition; appointment of members.
- §5-20-3. Powers of the commission.
- §5-20-4. Compensation and expenses of members; expenses of the commission.
- §5-20-5. Executive sessions authorized; demand to be heard in open hearing.
- §5-20-6. Immunity granted to commission members.
- §5-20-7. Privilege granted to commission findings, reports and evidence.
- §5-20-8. Reports of the commission; termination of commission.
- §5-20-9. Interpretation of section.

§5-20-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (a) That on the twenty-seventh day of April, one
3 thousand nine hundred seventy-eight, at Willow Island,
4 Pleasants County, West Virginia, a cooling tower then
5 under construction collapsed, resulting in the loss of a
6 great many lives;

7 (b) That every effort should be made to prevent the
8 repetition of any similar tragic occurrence or incident in
9 the future and, toward that end, it is proper and desirable
10 that a complete, detailed and thorough investigation into
11 the reasons for and causes of the collapse of such cooling
12 tower be made; which investigation should be independent
13 of and free from any litigation which has been or may
14 be instituted with respect to such collapse;

15 (c) That toward this end, the governor, by executive
16 order No. 15-78, dated the sixth day of October, one thou-
17 sand nine hundred seventy-eight, created and established
18 the governor's commission on Willow Island, comprised of
19 nine members, consisting of and generally representative
20 of the public and of various interests, bodies, groups and
21 organizations as specified in subsection (b) of this section;

22 (d) That in furtherance of the intent and purposes of
23 the aforesaid executive order it is the intent of the Legis-

24 lature to continue the governor's commission on Willow
25 Island and to expand upon its powers, duties and respon-
26 sibilities in order to facilitate its investigative purposes
27 and assure the orderly execution of its functions and
28 duties;

29 (e) That it recognizes that the provisions of section 1,
30 article V of the constitution of West Virginia prohibit any
31 person from exercising the powers of more than one
32 branch or department of government at the same time;
33 however, it is the express purpose, intent and finding of
34 the Legislature that those members of the commission
35 who are members of the Legislature are acting as mem-
36 bers of Legislature while serving on the commission and
37 in the furtherance of the Legislature's inherent right and
38 power to investigate and inquire into and report on those
39 matters which are legitimately within its powers, and
40 that since the commission's role and duties are investi-
41 gative and reportive in nature, the service upon the com-
42 mission by its legislative members and the service of its
43 chairman are not violative of nor inimical to the consti-
44 tutional mandate with respect to the separation of gov-
45 ernmental powers.

**§5-20-2. Governor's commission on Willow Island continued;
composition; appointment of members.**

1 The governor's commission on Willow Island, herein-
2 after denominated "commission," heretofore created and
3 existing under the authority of an executive order dated
4 the sixth day of October, one thousand nine hundred
5 seventy-eight, is hereby continued. The commission shall
6 continue to consist of nine members appointed by the
7 governor as follows: One shall be the commissioner of
8 labor, who shall serve as chairman of the commission;
9 two shall be members of the West Virginia Legislature,
10 one from the Senate and one from the House of Delegates;
11 two shall be representatives of and shall be nominated
12 by an organization composed of and representing the
13 interests of the surviving members of the families of
14 those persons killed at the Willow Island cooling tower
15 collapse; two shall be representatives of organized labor;

16 one shall be representative of the business community;
17 and one shall be representative of the general public.
18 Those persons previously appointed who are members
19 of the commission upon the effective date of this article
20 shall continue as members of the commission and shall
21 remain members of the commission until their resigna-
22 tion, death or removal by the governor, in which case
23 or event the governor shall appoint a new member from
24 or representative of the same group or interests as the
25 former member.

§5-20-3. Powers of the commission.

- 1 The commission has the power, duty and responsibility:
- 2 (a) To conduct a comprehensive and detailed investi-
3 gation into the collapse of the cooling tower at Willow
4 Island, to evaluate the facts and circumstances surround-
5 ing such collapse and, if possible, to determine the cause
6 or causes of such collapse;
- 7 (b) To analyze and evaluate the findings and reports
8 of the occupational health and safety administration with
9 respect to the collapse of the cooling tower at Willow
10 Island and to report to the governor and the Legislature
11 with respect thereto;
- 12 (c) To administer oaths, to examine witnesses, to com-
13 pel the attendance of witnesses to appear before the com-
14 mission and to compel the production of such books,
15 records, documents or other papers or tangible things
16 as the commission may require to conduct its investi-
17 gation, and to this end the commission is hereby given
18 authority to issue subpoenas or subpoenas duces tecum.
19 Any subpoena or subpoena duces tecum issued on behalf
20 of the commission shall be over the signature of the
21 chairman. If any person subpoenaed to appear before
22 the commission or before any committee or subcommittee
23 thereof refuses to appear or to answer inquiries pro-
24 pounded to such person, or fails or refuses to produce any
25 book, record, document or other paper or tangible thing
26 within his control when the same are demanded, the com-
27 mission or its chairman shall report the fact of such failure
28 or refusal to the circuit court of Kanawha County or

29 any other court of competent jurisdiction and such court
30 shall compel obedience to the subpoena or subpoena duces
31 tecum as though the subpoena or subpoena duces tecum
32 had been issued by such court in the first instance;

33 (d) To employ such legal, technical, investigative,
34 clerical, stenographic, advisory and other personnel as it
35 deems necessary and needful and to fix the reasonable
36 compensation of such persons as may be so employed;

37 (e) To perform every other act necessary or desirable
38 to carry out any of the other powers, duties or responsi-
39 bilities enumerated in this section.

**§5-20-4. Compensation and expenses of members; expenses of
the commission.**

1 Except for those members of the commission who are
2 members of the Legislature, the members of the com-
3 mission shall be reimbursed for all of their reasonable
4 and necessary travel and other expenses incurred in
5 connection with carrying out their duties as members
6 of the commission, which expenses shall be paid in the
7 manner and form prescribed by law or by any rule or
8 regulation and which expenses shall be paid from the
9 governor's civil contingency fund upon approval of the
10 governor. Members of the commission who are also
11 members of the Legislature shall be reimbursed for any
12 such expenses from the appropriation under "Account
13 No. 103 for Joint Expenses," upon approval of the joint
14 committee on government and finance.

15 Other expenses of the commission, including any fees,
16 salaries, wages and other expenses, shall be paid from
17 the appropriations made to the governor's civil contin-
18 gency fund, upon approval of the governor.

19 Members of the commission may receive no other com-
20 pensation for their services on or with the commission.

**§5-20-5. Executive sessions authorized; demand to be heard
in open hearing.**

1 Notwithstanding any provisions of article nine-a, chap-
2 ter six of the code to the contrary, the commission shall

3 have the power and authority to hold executive sessions
4 for the purpose of establishing policy or an agenda and
5 for the purpose of interrogating any witness or witnesses.
6 If a witness desires to testify or be interrogated in a public
7 or open hearing, such witness shall have the right to
8 demand the same and shall not be heard otherwise.
9 Conversely, if a witness desires to testify or be heard in
10 executive session, he shall notify the commission of his
11 desire and shall assign reasons therefor and the commis-
12 sion may, after consideration of the reasons assigned for
13 such request, grant the same. If such request is refused,
14 such refusal shall not constitute grounds for the refusal
15 to testify. The commission may permit members of the
16 staff of the commission to attend and be present during
17 any executive session of the commission, whether for
18 the taking of evidence or otherwise.

§5-20-6. Immunity granted to commission members.

1 No member of the commission may be held liable,
2 either civilly or criminally, for delivering an opinion,
3 uttering a speech, or for statements made in debate during
4 any meeting of the commission or of any committee or
5 subcommittee thereof, nor for the contents of any report,
6 document or other writing prepared by the commission or
7 by any committee or subcommittee thereof, nor shall any
8 member be subpoenaed to testify or questioned before
9 or by any other tribunal or court with respect to any
10 such opinion, utterance, speech, statement or report or
11 as to any finding or findings of the commission.

§5-20-7. Privilege granted to commission findings, reports and evidence.

1 None of the findings, reports, testimony, statements or
2 other evidence of whatsoever nature adduced by, belong-
3 ing to or made by the commission may be used as evidence
4 in any court or other tribunal for any purpose whatso-
5 ever, nor shall the same be subject to any subpoena or
6 subpoena duces tecum issued by any court or other
7 tribunal.

§5-20-8. Reports of the commission; termination of commission.

1 The commission shall submit any report or reports as
 2 to its findings and conclusions, along with any recom-
 3 mendations which it deems appropriate, to the Legisla-
 4 ture and the governor on or before July one, one thousand
 5 nine hundred eighty, after which date it shall cease its
 6 existence.

§5-20-9. Interpretation of section.

1 The provisions of this article shall be in addition to
 2 and not in derogation of the purposes of the commission
 3 as set forth in the aforesaid executive order No. 15-76,
 4 and none of the provisions of this section may be con-
 5 strued so as to limit the primary purpose of the com-
 6 mission as set forth in said executive order.

CHAPTER 121

(Com. Sub. for H. B. 947—By Mr. Wiedebusch and Mr. Greer)

[Passed March 7, 1979; in effect July 1, 1979. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen; to amend and reenact sections one-c, one-d, seven-a and nine, article four; and section one, article four-a, all of said chapter, all relating to creating a workmen's compensation advisory board; providing for its membership and members' terms, appointment and duties; providing a method of calling meetings and requiring annual report; payment of temporary total disability benefits; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made; method and time of payments for permanent disability; monitoring of injury claims; legislative findings; review of medical evidence; independent medical evaluations; temporary total disability benefits; mandatory

action; additional authority; physical and vocational rehabilitation; payments for medical expenses on physician's request; disabled workmen's relief fund; and payment of permanent total disability benefits at thirty-three and one-third percent of average weekly wage.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-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 eighteen; that sections one-c, one-d, seven-a and nine, article four; and section one, article four-a, all of said chapter, be amended and reenacted to read as follows:

Article

1. General Administrative Provisions.
4. Disability and Death Benefits.
- 4A. Disabled Workmen's Relief Fund.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-18. Workmen's compensation advisory board created; membership; appointment; terms; meetings; duties; annual reports.

1 There is hereby created an advisory board to the commis-
2 sioner of the workmen's compensation fund to be known as
3 "the workmen's compensation advisory board."

4 The workmen's compensation advisory board consists of
5 ten members. The workmen's compensation commissioner is
6 an ex officio member of the board whose term as such member
7 continues for that period in which he holds that office. The
8 other nine members of the board shall be appointed by the
9 governor with three members representing employees subject
10 to this chapter, three members representing employers subject
11 to this chapter and three members representing providers of
12 medical services to such employees for which such providers
13 are compensated under the provisions of this chapter. The
14 term of each member except the workmen's compensation
15 commissioner shall be three years: *Provided*, That of the per-
16 sons originally appointed, three members, including one mem-
17 ber of each of the three representative groups, shall be desig-

18 nated to serve for terms of one year each, three members, in-
19 cluding one member of each of the three representative groups,
20 shall be designated to serve for terms of two years each and
21 three members, including one member of each of the three
22 representative groups, shall be designated to serve for a term
23 of three years each. The terms of all the initially appointed
24 members of the board shall begin on the first day of July, one
25 thousand nine hundred seventy-nine. Upon the expiration of
26 each of such initial appointments the term of each new ap-
27 pointee shall be three years, but any person appointed to fill a
28 vacancy occurring prior to the expiration of the term for which
29 his predecessor was appointed shall be appointed only for the
30 remainder of such term. Each member shall serve until the
31 appointment and qualification of his successor. Members shall
32 be eligible for reappointment.

33 The workmen's compensation commissioner shall serve as
34 chairman of the board. The other nine members shall select
35 one of their number to serve as vice chairman of the board and
36 to preside in the absence of the commissioner. Meetings may
37 be held at any time at the call of the commissioner. The com-
38 missioner shall call a meeting whenever a majority of the
39 other members of the board request him to do so. At least one
40 meeting shall be held annually.

41 The purpose of the board and the duty of its members are to
42 advise the workmen's compensation commissioner on matters
43 pertinent to the administration of the workmen's compensa-
44 tion fund. The board shall consider any matter brought before
45 it by the commissioner or any appointed member and may
46 consider any matter referred to it by a person not a member
47 of the board. At the conclusion of its consideration of any
48 proposal the board shall make its recommendation to the
49 commissioner. The commissioner is not bound by any recom-
50 mendation of the board. The board also may formulate general
51 or long-range plans for improvements in the administration of
52 the fund for the consideration of the commissioner.

53 By the second Wednesday of January of each year the
54 board shall prepare and deliver to the workmen's compensa-
55 tion commissioner and to the Legislature a report of all the
56 matters it considered, recommendations it made and plans it

57 formulated during the preceding calendar year. The report
58 shall include any recommendations it may have for changes in
59 the law which would be necessary to implement any of its
60 administrative recommendations.

61 Unless sooner terminated by law and until and unless ex-
62 tended, the West Virginia workmen's compensation advisory
63 board shall cease to exist on the thirtieth day of June, one
64 thousand nine hundred eighty-two.

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 pro-
test; right of commissioner to collect payments improperly
made.

§23-4-1d. Method and time of payments for permanent disability.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medi-
cal evidence; independent medical evaluations; temporary total
disability benefits; mandatory action; additional authority.

§23-4-9. Physical and vocational rehabilitation.

**§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 col-
lect payments improperly made.**

1 Upon a finding by the commissioner that a claimant has
2 sustained a compensable injury within the meaning of section
3 one of this article, as may clearly appear from the employer's
4 report of injury, or otherwise, that disability will last longer
5 than three days as provided in section five of this article, the
6 commissioner may immediately commence payment of tem-
7 porary total disability benefits to the claimant in the amounts
8 provided for in sections six and fourteen of this article, and
9 payment of the expenses provided for in subdivision (a),
10 section three of this article, relating to said injury, without
11 waiting for the expiration of the thirty-day period during
12 which objections may be filed to such findings as provided in
13 section one, article five of this chapter. The commissioner
14 shall give immediate notice to the employer of his findings and
15 of the commencement of such payments.

16 The commissioner shall determine whether or not the
17 claimant has sustained a compensable injury within the mean-

18 ing of section one of this article, and may commence pay-
19 ment of temporary total disability benefits as provided herein
20 immediately upon receipt of the employer's report of injury
21 when the employer's report clearly indicates a compensable
22 injury that will last longer than three days and shall commence
23 such payment within fifteen days upon receipt of the em-
24 ployee's or employer's report of injury, whichever is received
25 sooner, and receipt of either a proper physician's report or
26 any other information necessary for a determination.

27 Upon receipt of the first report of injury in a claim, the
28 commissioner shall request from the employer or employers
29 any wage information necessary for determining the rate of
30 benefits to which the employee is entitled. If an employer
31 does not furnish the commissioner with this information within
32 fifteen days from the date the commissioner received the
33 first report of injury in the case, the employee shall be paid
34 temporary total disability benefits for lost time at the rate
35 the commissioner believes would be justified by the usual rate
36 of pay for the occupation of the injured employee. The
37 commissioner shall adjust the rate of benefits both retroactively
38 and prospectively upon receipt of proper wage information.
39 The commissioner shall have access to all wage information in
40 the possession of any state agency, including wage information
41 received by the department of employment security under
42 chapter twenty-one-a of this code, pertinent to such determina-
43 tion.

44 Upon a finding of the commissioner that a claimant, who
45 has sustained a previous compensable injury which has been
46 closed by an award of temporary total disability or permanent
47 partial disability, suffers further temporary total disability
48 or requires further medical or hospital treatment resulting
49 from the compensable injury giving rise to the former award,
50 the commissioner shall immediately commence payment of
51 temporary total disability benefits to the claimant in the
52 amounts provided for in sections six and fourteen of this
53 article, and the expenses provided for in subdivision (a),
54 section three of this article, relating to said disability, with-
55 out waiting for the expiration of the thirty-day period during
56 which objections may be filed to such findings as provided
57 in section one, article five of this chapter. The commissioner

58 shall give immediate notice to the employer of his findings and
59 of the commencement of such payment.

60 Where the employer is a subscriber to the workmen's
61 compensation fund under the provisions of article three of
62 this chapter, and upon the findings aforesaid, the commissioner
63 shall mail all workmen's compensation checks paying tem-
64 porary total disability benefits directly to the claimant and not
65 to the employer for delivery to the claimant.

66 Where the employer has elected to carry his own risk
67 under section nine, article two of this chapter, and upon
68 the findings aforesaid, the commissioner shall immediately
69 issue a pay order directing the employer to pay such amounts
70 as are due the claimant for temporary total disability bene-
71 fits. A copy of the order shall be sent to the claimant. The
72 self-insured employer shall commence such payments by mail-
73 ing or delivering the payments directly to the employee within
74 ten days of the date of the receipt of the pay order by the
75 employer. If the self-insured employer believes that his em-
76 ployee is entitled to benefits, he may start payments before
77 receiving a pay order from the commissioner.

78 In the event that an employer files a timely objection to
79 any finding or order of the commissioner, as provided in
80 section one, article five of this chapter, with respect to
81 the payment or continued payment of temporary total disability
82 benefits and those expenses as outlined in subdivision (a),
83 section three of this article, as provided herein, the com-
84 missioner shall continue to pay to the claimant such benefits
85 and expenses during the period of such disability unless it is
86 subsequently found by the commissioner that the claimant
87 was not entitled to receive the temporary total disability
88 benefits and the expenses provided for in subdivision (a),
89 section three of this article, or any part thereof, so paid,
90 in which event the commissioner shall, where the employer is
91 a subscriber to the fund, credit said employer's account
92 with the amount of the overpayment; and, where the employer
93 has elected to carry his own risk, the commissioner shall
94 refund to such employer the amount of the overpayment. The
95 amounts so credited to a subscriber or repaid to a self-insurer
96 shall be charged by the commissioner to the surplus fund

97 created by section one, article three of this chapter. If the
98 final decision in any case determines that a claimant was
99 not lawfully entitled to benefits paid to him pursuant to a
100 prior decision, such amount of benefits so paid shall be
101 deemed overpaid. The commissioner may recover such amount
102 by civil action or in any manner provided in this code for
103 the collection of past-due payment and shall withhold, in
104 whole or in part, as determined by the commissioner, any
105 future benefits payable to the individual and credit such
106 amount against the overpayment until it is repaid in full.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the commissioner makes an award for permanent
2 partial or permanent total disability, the commissioner or
3 self-insured employer shall start payment of benefits by
4 mailing or delivering the amount due directly to the em-
5 ployee within fifteen days from the date of the award.

6 (b) If a timely protest to the award is filed, as pro-
7 vided in section one of article five, the commissioner or
8 self-insured employer shall continue to pay to the claimant
9 such benefits during the period of such disability unless it
10 is subsequently found by the commissioner that the claimant
11 was not entitled to receive the benefits, or any part thereof,
12 so paid, in which event the commissioner shall, where the
13 employer is a subscriber to the fund, credit said employer's
14 account with the amount of the overpayment; and, where
15 the employer has elected to carry his own risk, the com-
16 missioner shall refund to such employer the amount of the
17 overpayment. The amounts so credited to a subscriber or
18 repaid to a self-insurer shall be charged by the commis-
19 sioner to the surplus fund created by section one, article
20 three of this chapter. If the final decision in any case deter-
21 mines that a claimant was not lawfully entitled to benefits
22 paid to him pursuant to a prior decision, such amount of
23 benefits so paid shall be deemed overpaid. The commis-
24 sioner may recover such amount by civil action or in any
25 manner provided in this code for the collection of past-
26 due payment and shall withhold, in whole or in part, as
27 determined by the commissioner, any future benefits payable

28 to the individual and credit such amount against the over-
29 payment until it is repaid in full.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; independent medical evaluations; temporary total disability benefits; mandatory action; additional authority.

1 (a) The Legislature hereby finds and declares that in-
2 jured claimants should receive the type of treatment needed
3 as promptly as possible; that overpayments of temporary
4 total disability benefits with the resultant hardship created
5 by the requirement of repayment should be minimized; and
6 that to achieve these two objectives, it is essential that
7 the commissioner establish and operate a systematic program
8 for the monitoring of injury claims where the disability
9 continues longer than might ordinarily be expected.

10 (b) In view of the foregoing findings, the commissioner,
11 in consultation with medical experts, shall establish guidelines
12 as to the anticipated period of disability for the various
13 types of injuries. Each injury claim in which temporary
14 total disability continues beyond the anticipated period of
15 disability so established for the injury involved shall be
16 reviewed by the commissioner. If satisfied, after reviewing
17 the medical evidence, that the claimant would not benefit by
18 an independent medical evaluation, the commissioner shall
19 mark the claim file accordingly and shall diary such claim
20 file as to the next date for required review which shall not
21 exceed sixty days. If the commissioner concludes that the
22 claimant might benefit by an independent medical evaluation,
23 he shall proceed as specified in subsection (c) of this section.

24 (c) When the commissioner concludes that an independent
25 medical evaluation is indicated, or that a claimant may be
26 ready for disability evaluation in accordance with other
27 provisions of this chapter, he shall refer the claimant to a
28 physician or physicians of his selection for examination and
29 evaluation. If the physician or physicians so selected recom-
30 mend continued, additional or different treatment, the recom-
31 mendation shall be relayed to the claimant and his then
32 treating physician and the recommended treatment may be
33 authorized by the commissioner. If the physician or physicians

34 so selected conclude that the claimant has reached his maxi-
35 mum degree of improvement and that the claimant has no
36 permanent partial disability or that it is too early to evaluate
37 the claimant as to permanent partial disability, temporary
38 total disability benefits shall cease as of the date of receipt
39 by the commissioner of the report or reports of such phy-
40 sician or physicians and the same rule shall govern and con-
41 trol in any claim in which the treating physician shall advise
42 the commissioner that the claimant has reached his maximum
43 degree of improvement or that he is ready for disability
44 evaluation: *Provided*, That if the examining physician or
45 physicians conclude that the claimant has reached his maxi-
46 mum degree of improvement and has permanent partial
47 disability, the temporary total disability benefits shall con-
48 tinue for thirty days or until an order is entered granting
49 to the claimant a permanent partial disability award, which-
50 ever shall first occur: *Provided, however*, That under no
51 circumstances shall a claimant be entitled to receive tem-
52 porary total disability benefits beyond the date he is released
53 to return to work.

54 (d) Notwithstanding the anticipated period of disability
55 established pursuant to the provisions of subsection (b) of
56 this section, whenever in any claim temporary total disability
57 shall continue longer than one hundred twenty days from the
58 date of injury (or from the date of the last preceding examina-
59 tion and evaluation pursuant to the provisions of this sub-
60 section or pursuant to the directions of the commissioner
61 under other provisions of this chapter), the commissioner
62 shall refer the claimant to a physician or physicians of his
63 selection for examination and evaluation in accordance with
64 the provisions of subsection (c) of this section and all of
65 the other provisions of such subsection (c) shall be fully
66 applicable: *Provided further*, That the requirement of manda-
67 tory examinations and evaluations pursuant to the provisions
68 of this subsection (d) shall not apply to any claimant who
69 sustained a brain stem or spinal cord injury with resultant
70 paralysis or an injury which resulted in an amputation neces-
71 sitating a prosthetic appliance.

72 (e) The provisions of this section are in addition to
73 and in no way in derogation of the power and authority

74 vested in the commissioner by other provisions of this
75 chapter or vested in the employer to have a claimant examined
76 by a physician or physicians of its selection and at its
77 expense, or vested in the claimant or employer to file a
78 protest, under other provisions of this chapter.

§23-4-9. Physical and vocational rehabilitation.

1 In cases where an employee has sustained a permanent
2 disability, or has sustained injuries likely to result in per-
3 manent disability, and such fact has been determined by
4 the commissioner, and the employee can be physically and
5 vocationally rehabilitated and returned to remunerative em-
6 ployment by vocational training, by the use of crutches,
7 artificial limbs, or other approved mechanical appliances,
8 or by medicines, medical, surgical, dental or hospital treat-
9 ment, the commissioner shall forthwith, after due notice
10 to the employer, expend such an amount as may be neces-
11 sary for the aforesaid purposes: *Provided*, That such ex-
12 penditure for vocational rehabilitation shall not exceed ten
13 thousand dollars for any one injured employee: *Provided*,
14 *however*, That no payment shall be made for such vocational
15 rehabilitation purposes as provided by this section unless
16 authorized by the commissioner prior to the rendering of such
17 physical or vocational rehabilitation except, that payments
18 shall be made for reasonable medical expenses without prior
19 authorization if sufficient evidence exists which would relate
20 the treatment to the injury and the attending physician or
21 physicians have requested authorization prior to the rendering
22 of such treatment.

23 In every case in which the commissioner shall order
24 physical or vocational rehabilitation of a claimant as pro-
25 vided herein, the claimant shall, during the time he is re-
26 ceiving any vocational rehabilitation or rehabilitative treat-
27 ment that renders him totally disabled during the period there-
28 of, be compensated on a temporary total disability basis for
29 such period.

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

1 For the relief of persons who are receiving benefits pursuant

2 to a permanent total disability award in amounts less than
3 thirty-three and one-third percent of the average weekly wage
4 for the state of West Virginia per month, and for the relief of
5 widows who are receiving benefits on account of the death
6 of an employee in amounts less than thirty-three and one-
7 third percent of the average weekly wage in the state of West
8 Virginia per month, and for the relief of children of em-
9 ployees deceased before one thousand nine hundred sixty-
10 seven, who are under the age of twenty-three and who are
11 full-time students, and for the relief of other persons who
12 are receiving dependents' benefits on account of the death
13 of an employee in amounts less than the specific monetary
14 amounts set forth in section ten, article four of this chapter
15 and in effect as of July one, one thousand nine hundred
16 seventy-three, there is hereby created a separate fund to
17 be known as the "Disabled Workmen's Relief Fund," which
18 fund shall consist of such sums as are from time to time
19 made available to carry out the objects and purposes of this
20 article. Said fund shall be in the custody of the state treasurer
21 and disbursements therefrom shall be made upon requisition
22 signed by the commissioner to those persons entitled to
23 participate therein and in such amounts to each participant
24 as is provided in section three of this article.

CHAPTER 122

(H. B. 939—By Mr. Martin, 35th District, and Mr. Caudle)

[Passed March 10, 1979; in effect from passage. Approved by the Governor.]

AN ACT authorizing the Jefferson County board of education to convey title to a parcel of board owned land to Shepherdstown Day Care, Inc., at a fair market value to be determined by the board and requiring any deed of conveyance to contain a contingent remainder interest in such real estate to vest in any person, corporation or agency of instrumentality of the United States, if the Shepherdstown Day Care, Inc., ceases or fails to

use such real estate for day-care purpose or ceases to be a non-profit corporation.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY BOARD OF EDUCATION.

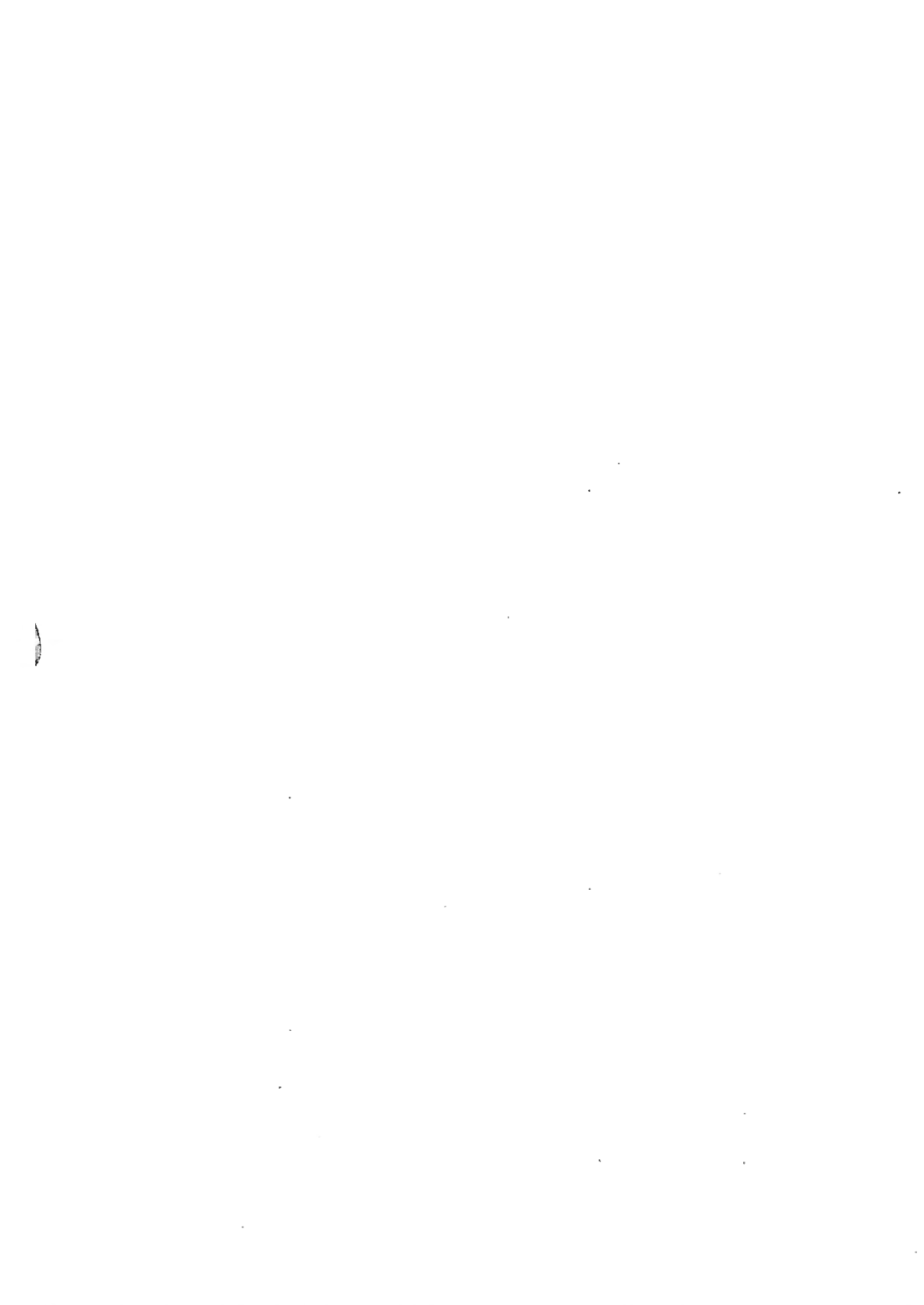
§1. Authorization to convey board owned land to Shepherdstown Day Care, Inc.

1 The Legislature hereby recognizes that adequate day care
2 facilities are necessary for the citizens of Jefferson County
3 who have young children and must seek employment outside
4 of the home to support their children. Accordingly, the Legis-
5 lature hereby finds and declares that transfers of any property,
6 real or personal made by county boards of education to any
7 person, organization or corporation for the furtherance of such
8 activities promote the economic and educational welfare of
9 the public and, therefore, is a public purpose.

10 Notwithstanding the provisions of section seven, article
11 five, chapter eighteen of the official code of the state of West
12 Virginia, the board of education of Jefferson County is hereby
13 authorized and empowered to negotiate terms in accordance
14 with the provisions of this section and to sell to Shepherdstown
15 Day Care, Inc., the real estate and all appurtenances thereto
16 described as the East Side School Building, on East German
17 Street Extended, near the corporation of Shepherdstown,
18 Shepherdstown District, Jefferson County, West Virginia.

19 The consideration for such conveyance shall be a fair market
20 value as determined by the Jefferson County board of educa-
21 tion.

22 The instrument of conveyance shall contain a provision
23 requiring a contingent remainder interest in such real estate
24 to vest in any person, corporation or agency or instrumentality
25 of the United States if Shepherdstown Day Care, Inc., ceases
26 or fails to use such real estate for day care purposes or ceases
27 to be a nonprofit corporation.



RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 8

(By Mr. Farley and Mr. Swann)

[Adopted February 7, 1979]

Amending Joint Rules of the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That the Joint Rules of the Senate and House of Delegates be amended by adding thereto a new rule designated Joint Rule No. 29.

29. Prior to consideration of any bill relating to public pensions or retirement by the Senate or the House of Delegates or by any committee thereof, such bill shall be reviewed by the Legislative Commission on Pensions and Retirement, who shall meet and consider such bills and, within a reasonable time after submission, report to the standing committee to which the bill was referred its recommendations relating to such bill: *Provided*, That failure of the Legislative Commission on Pensions and Retirement to make such report shall not preclude consideration or action on any such bill.

HOUSE CONCURRENT RESOLUTION NO. 9

(By Mr. Bryan, Mr. Hendricks, Mr. Starcher, Mr. Teets,
Mr. Goodwin and Mr. Blackwell)

[Adopted January 31, 1979]

Expressing concern about the regulatory program of the Federal Office of Surface Mining Reclamation and Control under the Surface Mining Control and Reclamation Act of 1977 which applies to both surface and underground mines.

WHEREAS, The State of West Virginia has for many years administered an environmentally sound and workable mining reclamation program specifically designed to address the reclamation problems associated with the terrain, climate and other physical conditions associated with mining in West Virginia; and

WHEREAS, The Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, passed by the Congress of the United

States on August 3, 1977, created the Office of Surface Mining Reclamation and Enforcement in the United States Department of the Interior and authorized the promulgation of rules and regulations by said Office to implement Public Law 95-87; and

WHEREAS, Section 101(f) of the Surface Mining Control and Reclamation Act of 1977 provides that "because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States"; and

WHEREAS, On December 13, 1977, the Office of Surface Mining Reclamation and Enforcement issued rules and regulations applicable to the surface and underground mining operations in all the States until each State has a federally approved regulatory program; and

WHEREAS, On September 18, 1978, the Office of Surface Mining Reclamation and Enforcement proposed rules and regulations to implement a nationwide permanent program for the regulation of surface and underground mining operations; and

WHEREAS, The issuance of the December 13, 1977, regulations causes, and the issuance of regulations such as those proposed on September 18, 1978, will cause, great disruption in the West Virginia mining reclamation program; and

WHEREAS, Said rules and regulations cause unnecessary economic hardship in the West Virginia coal industry and the State's overall economy; and

WHEREAS, Said rules and regulations unnecessarily add to the inflation pressures in the nation's economy as testified to by the Council of Economic Advisors to the President of the United States, the President's Council on Wage and Price Stability and other recognized governmental panels; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia protests and deplors the conditions caused by the rules and regulations of the Office of Surface Mining Reclamation and Enforcement promulgated and proposed under Public Law 95-87 and hereby petitions the Congress of the United States to more carefully oversee the adminis-

tration of Public Law 95-87, to reconsider this approach and requirements for state plans to implement the program, and to investigate the backgrounds and philosophies and professional competency of the staff at the highest level of the Office of Surface Mining Reclamation and Enforcement; and, be it

Further Resolved, That the Legislature of the State of West Virginia encourage the West Virginia Department of Natural Resources to resist unwarranted federal interference in the West Virginia mining reclamation program and to take all steps necessary to assure the West Virginia mining reclamation program remains oriented toward the legitimate environmental concerns of the State of West Virginia, regardless of the requirements of the national rules and regulations developed by the Office of Surface Mining Reclamation and Enforcement which may address problems of other coal producing regions of the nation; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the President of the United States and to the Senators and members of the House of Representatives representing the State of West Virginia in the Congress.

HOUSE CONCURRENT RESOLUTION NO. 35

(By Mr. Brenda and Mrs. Richards)

[Adopted March 8, 1979]

Requesting the Congress of the United States to mandate that the United States Customs Service, the United States Department of the Treasury and the International Trade Commission take all necessary steps to ensure the enforcement of existing federal statutes and regulations prohibiting dumping of foreign steel products in the United States.

WHEREAS, The selling of foreign steel products in the United States at prices substantially below their fair market value in this country is creating severe hardship upon the steel industry in West Virginia due to decreased demand for its products; and

WHEREAS, Weirton Steel Company provides employment for 14,500 West Virginia citizens and Connors Steel Company employs 900 West Virginians, and decreased demand for steel products

manufactured in West Virginia will necessitate layoffs of many of these employees and other steelworkers, causing severe economic and personal hardship; and

WHEREAS, There is ample federal statutory and administrative regulatory authority which, if strictly enforced, would prevent the practice by foreign enterprises known as "dumping"; and it is in the best interests of the citizens of West Virginia that such laws and regulations be expeditiously implemented and strictly enforced; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby requested to mandate that the United States Customs Service, the United States Department of the Treasury and the International Trade Commission take immediate action to implement and strictly enforce existing federal statutes and regulations to prevent the dumping of foreign steel products in the United States; and, be it

Further Resolved, That copies of this request be sent to the Clerk of the United States House of Representatives; the Secretary of the United States Senate and to each member of the West Virginia Congressional Delegation.

HOUSE CONCURRENT RESOLUTION NO. 47

(By Mr. Speaker, Mr. See, and Mr. Teets)

[Adopted March 9, 1979]

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 1978 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 Senate Concurrent Resolution No. 28, regular session, 1978, relating to coal mining.

2. House Concurrent Resolution No. 34, regular session, 1972, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to criminal laws.

3. House Concurrent Resolution No. 3, first extraordinary session, 1977, and continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to education of handicapped children.

4. Senate Concurrent Resolution No. 11, regular session, 1976, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to employee classification, salary and benefits.

5. Senate Concurrent Resolution No. 24, regular session, 1975, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to health and social services.

6. House Concurrent Resolution No. 3, first extraordinary session, 1977, and continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to higher education.

7. Senate Concurrent Resolution No. 19, regular session, 1973, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to the park system and including the study of Department of Natural Resources recreational facilities.

8. House Concurrent Resolution No. 31, regular session, 1969, and last continued by Senate Concurrent Resolution No. 28, regular session, 1978, relating to the tax structure of West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance continue the following studies initiated by the Joint Committee in 1978:

1. Hazardous materials, authorized April 10, 1978, by the Joint Committee on Government and Finance.

2. Public education study commission, authorized April 9, 1978, by the Joint Committee on Government and Finance.

3. Workmen's compensation, authorized April 9, 1978, 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, 1980; and, be it

Further Resolved, That all provisions of said concurrent resolutions be continued in force except as modified herein but that the Joint Committee on Government and Finance be authorized to restructure said studies to comply with the provisions of general law enacted by the Legislature.

HOUSE CONCURRENT RESOLUTION NO. 51

(By Mr. Speaker, Mr. See, and Mr. Teets)

[Adopted March 9, 1979]

Directing the Joint Committee on Government and Finance to make certain studies of programs and problems and report its recommendations with respect thereto to the Legislature.

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance make studies of programs and problems as follows:

1. The coordination and quality of services rendered to the blind through the various state agencies and the feasibility and advantages of establishing a West Virginia Commission on the Blind for the consolidation of those services;
2. General reformation of the law of torts, including negligence liability, malpractice liability and product liability, with consideration of government insurance or reinsurance programs and other liability protections, liability limits, punitive damages, attorneys' contingent fee arrangements, statutes of limitations on court actions, improvement of production standards and quality of consumer goods and the need for comparative negligence provisions in the law;
3. A monitoring of the initiation and implementation of organizational and procedural changes within the Public Service Commission, a review of studies the Commission conducts at the direction of

the Legislature or the federal government and an evaluation of any legislation recommended by the Commission;

4. A review of the general administration, field operations and personnel and employee practices within the Department of Natural Resources;

5. The desirability of abolishing the state sale of alcoholic beverages, adoption of a system of private sale of these beverages and abolishing the Office of West Virginia Nonintoxicating Beer Commissioner;

6. The need for nursing homes throughout the State and the best means for fulfilling this need;

7. The proliferation of governmental professional licensing boards and the costs of their operation; the degree to which these boards are dominated by the members of the regulated professions; the validity of licensing requirements with respect to the skills and abilities required in the practice of the regulated profession; the economic effect of professional licensing and the costs to the public; and the role of these boards in protecting the public from fraud, abuse and incompetence;

8. The administration, facilities and programs of the Department of Highways and the laws governing the Department; operations and efficiency of the various highway districts; needs to expedite and improve highway maintenance, repair and improvements; effects of using salt or other chemical products on roads and bridges during the winter months; and problems of implementation by the Department of the conditions set forth by the Institute for Certification of Engineering Technicians; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1980, 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 the studies herein authorized, to prepare reports and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 32

(By Mr. McGraw, Mr. Susman, Mr. Palumbo, Mr. Grubb,
Mr. Baylor and Mr. Steptoe)

[Adopted March 6, 1979]

Expressing the concern and disapproval of the Legislature of the State of West Virginia regarding the planned cut back by the United States Department of Transportation of the Amtrak route system which would eliminate passenger rail service in the State of West Virginia, and urging the Governor of the State of West Virginia, members of the United States Congress representing the State of West Virginia, the National Railroad Passenger Corporation and all other interested parties to exercise due diligence and their good offices to cause the United States Department of Transportation to cease implementation of its improvident decision.

WHEREAS, On January 31, 1979, the United States Department of Transportation reported its final recommendations for a restructured intercity rail passenger system to be operated by the National Railroad Passenger Corporation; and

WHEREAS, Such recommendations of the United States Department of Transportation will become law on or about May 15, 1979, unless the United States Senate or House of Representatives acts affirmatively to cancel the proposed recommendations; and

WHEREAS, The proposed rail passenger system would provide a minimal level of national interconnected service plus an additional group of services connecting major regions of the country and providing service to major population centers; and

WHEREAS, This proposal would eliminate twelve thousand miles of the present twenty-seven thousand mile system, reducing the system by forty-three percent, while reducing the funding of the system by only eight percent; and

WHEREAS, The recommendation, if implemented, would result in the loss of employment for approximately five thousand Amtrak employees; and

WHEREAS, Under the recommended system, the passenger train

Shenandoah, which runs from Washington, D. C. to Cincinnati would be rerouted through Pittsburgh, the passenger train Cardinal, which runs from Washington, D. C. to Chicago would be discontinued, and the passenger train Hilltopper, which runs from Washington, D. C. through Petersburg, Virginia to the Tri-State Station in Kentucky would be discontinued, all of which would eliminate passenger rail service entirely from the State of West Virginia except for the weekend operation of the passenger train Blue Ridge, which would carry tourists from Washington, D. C. to Harper's Ferry, West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia expresses its most serious reservations regarding the wisdom of the recommendations and strongly oppose implementation of the proposed restructured intercity rail passenger system; and, be it

Further Resolved, That the Legislature of West Virginia advises the United States Department of Transportation that the citizens of this great State are likewise citizens of these United States, and as such are entitled to the beneficial services of the Federal government and its Department of Transportation, as are other citizens of this Union; and, be it

Further Resolved, That the Legislature of West Virginia requests and urges the Governor of the State of West Virginia, members of the United States Congress representing the State of West Virginia, the National Railroad Passenger Corporation and all other interested parties to exercise due diligence and their good offices to cause the United States Department of Transportation to cease implementation of its improvident decision, eliminating passenger rail service in the State of West Virginia; and, be it

Further Resolved, That copies of this request be sent to the Governor of the State of West Virginia, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, each member of the West Virginia Congressional Delegation and to the President of Amtrak.

SENATE CONCURRENT RESOLUTION NO. 33

(Originating in the Senate Committee on Energy,
Industry and Mining)

[Adopted March 7, 1979]

Urging the United States Environmental Protection Agency to take prompt action under Section 125 of the Clean Air Act to fully protect the rights of West Virginia coal producers to sell their coal to utility customers in Ohio.

WHEREAS, The United States Environmental Protection Agency (EPA) has instituted proceedings under 42 U.S.C. §7425, Section 125 of the Clean Air Act; and

WHEREAS, The producers of Ohio coal have asked EPA to issue orders under Section 125 which would prevent the Ohio electric utilities from complying with their sulfur dioxide emission limitations by the use of low sulfur coal produced in West Virginia; and

WHEREAS, Based on filings by the Ohio electric utilities with EPA, any order under Section 125 requiring those utilities to use only Ohio produced coal would jeopardize the annual sale of approximately six million tons of West Virginia produced coal beginning in 1980, which would represent a significant annual loss to the West Virginia economy; and

WHEREAS, EPA's authority under Section 125 is limited to prohibition of "other than locally or regionally available coal"; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia expresses its opposition to the manner in which EPA is applying Section 125 to monopolize and create special preference in the Ohio electric utility coal market in favor of Ohio coal producers. It is clear from the plain language and the legislative history of Section 125 that this section was not intended to create barriers to the free trade of West Virginia coal into West Virginia coal producers' normal markets in neighboring states, such as Ohio, nor was this section envisioned as a means to empower EPA to embargo against the shipment of West Virginia coal into Ohio to protect Ohio coal interests. Furthermore, in the interests of a strong coal industry as an important part of the

nation's energy policy, it would be unsound to apply Section 125 to Balkanize coal trade into a series of state markets for the purpose of shielding the Ohio coal industry from competition from West Virginia and other state producers; and, be it

Further Resolved, That the Legislature of the State of West Virginia urges the Environmental Protection Agency to define "local or regionally available coal" consistent with the intent of Congress which is in a fashion that recognizes the market traditionally shared by the many coal suppliers in a multi-state region encompassing the states of West Virginia, Ohio and others so that West Virginia coal can be sold to its utility customers in the neighboring state of Ohio; and, be it

Further Resolved, That copies of this resolution be sent to President Jimmy Carter, EPA Administrator Douglas Costle, and West Virginia's Congressional delegation.

HOUSE RESOLUTION NO. 7

(By Mrs. Spears and Mr. Teets)

[Adopted January 18, 1979]

Amending House Rule No. 95a, relating to fiscal notes.

Resolved by the House of Delegates:

That House Rule No. 95a be amended to read as follows:

Fiscal Notes

95a. Prior to consideration, by the House or by any committee thereof, of any bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State, or in any manner changes or modifies any existing tax or rate of taxation, such bill shall have attached thereto a fiscal note, which "fiscal note" shall conform to the requirements as to form and content prescribed by the "Fiscal Note Manual," prepared and adopted by the Committee on Rules to govern preparation of fiscal notes to bills introduced in the House of Delegates.

In the case of a bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or

other subdivision of the State, nothing herein shall prohibit consideration of such a bill if, in the opinion of the chairman of the committee to which the bill has been referred, or in the opinion of the Speaker, a reasonable time has elapsed since a fiscal note was requested and no fiscal note or an incomplete fiscal note has been furnished.

It shall be the responsibility of the legislator introducing a bill to obtain such note when required. Such note shall be attached to the bill when filed for introduction, if at all possible, and shall accompany any bill requiring such note when the same is reported from committee.

The jackets of all measures with fiscal notes attached or requiring such notes shall have the words "Fiscal Note" or the initials "FN" clearly stamped or endorsed thereon.

Further Resolved, That Rule 95a, as amended herein, shall not take effect until January 15, 1980.

No act shall be void or voidable for noncompliance with this rule.

HOUSE RESOLUTION NO. 20

(By Mr. Speaker, Mr. See)

[Adopted February 2, 1979]

Amending the Rules of the House of Delegates, relating to a Presiding Officer in the absence of the Speaker.

Resolved by the House of Delegates:

That House Rule No. 8 be amended to read as follows:

Appointment of Speaker Pro Tempore, Presiding Officer in Absence of Speaker

8. The Speaker shall appoint a Speaker *pro tempore*, who, during the absence of the Speaker, shall preside and perform all duties of the Speaker: *Provided*, That the Speaker may designate by appointment in writing entered upon the Journal of the House, any member, other than the Speaker *pro tempore*, who, during the absence of the Speaker, shall preside and perform the duties of the Speaker until the Speaker returns to the chair: *Provided, further*, That the

Speaker may call any member to the chair to perform the duties of Speaker but such substitution shall not extend beyond an adjournment: *Provided, however,* That the Speaker *pro tempore* or any other member hereunder designated, shall so preside for a period not to exceed three consecutive legislative days, but for no longer period, except by special consent of the House.

SENATE RESOLUTION NO. 11

(By Mr. Moreland, etc.)

[Adopted February 8, 1979]

Urging the State Commissioner of Highways to designate a portion of new highway in Monongalia County as the "201st Memorial Way."

WHEREAS, The 201st Field Artillery of the West Virginia National Guard is the oldest active military organization in these United States; and

WHEREAS, The illustrious two hundred and forty year history of this proud fighting unit includes many famous campaigns in our country's wars, including the Bee Line Hike to Boston to engage the enemy in the Battle of Bunker Hill, frontier fighting in the early days of our Colonies, the decisive Battle of Point Pleasant and the Revolutionary War; and

WHEREAS, The 201st Field Artillery of the West Virginia National Guard, being one of the most highly rated units in the Army National Guard System and a proud organization with superb esprit de corps, has been an inspiration to the fighting men of our State; and

WHEREAS, The 201st Infantry and now Field Artillery is a well-known and highly respected military organization to most people in the north central part of West Virginia and, in fact, a great many families have had relatives who were members of this organization; and

WHEREAS, A new road is being constructed from the Mileground adjacent to the 201st Artillery Armory through the University Orchard and farm across the Stewartstown Road connecting onto and largely replacing the Chestnut Ridge Road which route for

planning purposes has been commonly referred to as the Orchard Road; and

WHEREAS, The identity of Orchard Road has little or not significance or meaning to the people of north central West Virginia as compared to the 201st Infantry and now the 201st Field Artillery; and

WHEREAS, The naming of the new road as the "201st Memorial Way" would honor and memorialize this fighting unit for its distinguished military service throughout the years; therefore, be it

Resolved by the Senate:

That the West Virginia Senate does urge and request that the State Commissioner of Highways designate the portion of new highway running from the Van Voorhis Road to U. S. Route 119 known as the Mileground as the "201st Memorial Way" and cause to be erected and maintained thereupon proper signs or other markers designating the same; and, be it

Further Resolved, That the Clerk is hereby directed to send copies of this resolution to the Governor of the State of West Virginia, the Honorable John D. Rockefeller IV, and to the State Commissioner of Highways, the Honorable Charles L. Miller.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1979

CHAPTER 1

(H. B. 101—By Mr. Speaker, Mr. See)

[Passed April 11, 1979; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

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

TITLE 1. GENERAL PROVISIONS.

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

1 **Section 1.—General Policy.**—The purpose of this bill is to
2 appropriate money necessary for economical and efficient
3 discharge of the duties and responsibilities of the state and
4 its agencies during the fiscal year one thousand nine hundred
5 eighty.

1 **Sec. 2.—Definitions.** For the purpose of this act: "Gov-
2 ernor" shall mean the Governor of the State of West Vir-
3 ginia.

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

6 The "fiscal year" one thousand nine hundred eighty shall
7 mean the period from July first, one thousand nine hundred
8 seventy-nine through June thirtieth, one thousand nine hundred
9 eighty.

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

1 **Sec. 3.—Classification of appropriations.**—An appropriation
2 for:

3 "Personal services" shall mean salaries, wages, and other
4 compensation paid to full-time, part-time and temporary
5 employees of the spending unit, but shall not include fees or
6 contractual payments paid to consultants or to independent
7 contractors engaged by the spending unit.

8 From appropriations made to the spending units of state
9 government, there may be transferred upon approval of the
10 Governor to a special account an amount sufficient to match
11 federal funds under any federal act.

12 Unless otherwise specified, appropriations for personal
13 services shall include salaries of heads of spending units.

14 "Current expenses" shall mean operating costs other than
15 personal services, and shall not include equipment, repairs
16 and alterations, buildings or lands.

17 "Equipment" shall mean equipment items which have an
18 appreciable and calculable period of usefulness in excess of
19 one year.

20 "Repairs and alterations" shall mean repairs to structures
21 and improvements to property which do not increase the
22 capital assets.

23 "Buildings" shall include construction and alteration of
24 structures and the improvement of lands and shall include
25 shelter, support, storage, protection or the improvement of a
26 natural condition; and

27 "Lands" shall mean the purchase of real property or interests
28 in real property.

29 Appropriations classified in any of the above categories
30 shall be expended only for the purposes as defined above.

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

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

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

AGRICULTURE

Department of agriculture—Acct. No. 5100	603
Department of agriculture (agricultural awards)—Acct. No. 5150	604
Department of agriculture (division of rural resources)— Acct. No. 5130	604
Department of agriculture (meat inspection)—Acct. No. 5140	604
Department of agriculture (soil conservation committee)— Acct. No. 5120	603
Farm management commission—Acct. No. 5110	603

BUSINESS AND INDUSTRIAL RELATIONS

Bureau of labor and department of weights and measures— Acct. No. 4500	599
Council of State Governments—Acct. No. 4720	600
Department of banking—Acct. No. 4800	602
Department of mines—Acct. No. 4600	600
Interstate commission on Potomac river basin—Acct. No. 4730	601

Interstate education compact—Acct. No. 4770	601
Interstate mining compact commission—Acct. No. 4510	600
Ohio river basin commission—Acct. No. 4690	600
Ohio river valley water sanitation commission—Acct. No. 4740	601
Southern Interstate nuclear board—Acct. No. 4780	601
Southern regional education board—Acct. No. 4750	601
West Virginia air pollution control commission—Acct. No. 4760	601
West Virginia nonintoxicating beer commission—Acct. No. 4900	602
West Virginia racing commission—Acct. No. 4950	602
West Virginia state aeronautics commission—Acct. No. 4850	602

CORRECTION

Anthony Center—Acct. No. 3690	589
Davis Center—Acct. No. 3710	590
Department of corrections—Acct. No. 3680	589
Department of corrections (community service northern region)— Acct. No. 3660	588
Department of corrections (community service southern region)— Acct. No. 3670	589
Department of corrections (probation and parole)—Acct. No. 3650	588
Huttonsville Correctional Center—Acct. No. 3760	591
Leckie Center—Acct. No. 3730	590
West Virginia industrial home for girls—Acct. No. 3720	590
West Virginia industrial school for boys—Acct. No. 3700	589
West Virginia penitentiary—Acct. No. 3750	591
West Virginia state prison for women—Acct. No. 3740	590

CONSERVATION AND DEVELOPMENT

Department of natural resources—Acct. No. 5650	605
Geological and economic survey—Acct. No. 5200	605
Public land corporation—Acct. No. 5660	607
Water development authority—Acct. No. 5670	607
West Virginia railroad maintenance authority—Acct. No. 5690	608

EDUCATIONAL

Department of culture and history—Acct. No. 3510	586
Department of education—Acct. No. 2860	582
Department of education (aid for exceptional children)—Acct. No. 2960	585
Department of education (support personnel)—Acct. No. 2990	585
Educational broadcasting authority—Acct. No. 2910	584
Marshall University (medical school)—Acct. No. 2840	581
State board of education (early childhood aides)—Acct. No. 2970	585
State board of education (vocational division)—Acct. No. 2940	584
State board of education (vocational division)—Acct. No. 2890	583
State department of education (professional educators)—Acct. No. 2900	584
State department of education (state aid to schools)—Acct. No. 2950	584
State department of education (school lunch program)—Acct. No. 2870	583
State department of education (teacher education program)—Acct. No. 2770	580
State FFA-FHA camp and conference center—Acct. No. 3360	586
Teachers retirement board—Acct. No. 2980	585
West Virginia board of regents—Acct. No. 2800	581
West Virginia board of regents (control)—Acct. No. 2790	580
West Virginia college of osteopathic medicine—Acct. No. 2810	581
West Virginia library commission—Acct. No. 3500	586
West Virginia schools for the deaf and the blind—Acct. No. 3330	586
West Virginia University (medical school)—Acct. No. 2850	582

EXECUTIVE

Governor's office—Acct. No. 1200	572
Governor's office (civil contingent fund)—Acct. No. 1240	573

Governor's office (custodial fund)—Acct. No. 1230	573
Governor's office (disaster relief-matching)—Acct. No. 1260	573
Governor's office (emergency flood disaster relief)—Acct. No. 1310	574
Governor's office (McMechen and Stonewood relief)—Acct. No. 1270	573
Office of economic and community development—Acct. No. 1210	572
Office of emergency services—Acct. No. 1300	574

FISCAL

Auditor's office (general administration)—Acct. No. 1500	574
Auditor's office (social security)—Acct. No. 1510	575
Department of finance and administration—Acct. No. 2100	577
Municipal bond commission—Acct. No. 1700	576
State board of insurance—Acct. No. 2250	578
State tax department—Acct. No. 1800	576
State tax department (property appraisal)—Acct. No. 1850	576
Treasurer's office—Acct. No. 1600	575
Treasurer's office (school building sinking fund)—Acct. No. 1650	575

HEALTH AND WELFARE

Andrew S. Rowan memorial home—Acct. No. 4270	598
Colin Anderson Center—Acct. No. 4190	597
Denmar state hospital—Acct. No. 4320	599
Department of veterans affairs—Acct. No. 4040	595
Department of veterans affairs (patriotic exercises)—Acct. No. 4030	594
Department of veterans affairs (veterans home)—Acct. No. 4010	594
Department of welfare—Acct. No. 4050	595
Department of welfare—West Virginia Children's Home—Acct. No. 4120	596
Fairmont emergency hospital—Acct. No. 4250	597
Greenbrier school for mentally retarded children—Acct. No. 4140	596
Hopemont state hospital—Acct. No. 4300	598
Pinecrest state hospital—Acct. No. 4310	598
Solid waste disposal—Acct. No. 4020	594
State board of education (rehabilitation division)—Acct. No. 4400	599
State commission on aging—Acct. No. 4060	595
State health department—Acct. No. 3900	591
State health department—mental hospitals—Acct. No. 4160	596
Welch emergency hospital—Acct. No. 4260	598

INCORPORATING AND RECORDING

Secretary of state—Acct. No. 2500	579
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JUDICIAL

Supreme Court—General Judicial—Acct. No. 1110	571
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LEGAL

Attorney general—Acct. No. 2400	579
Commission on uniform state laws—Acct. No. 2450	579

LEGISLATIVE

House of Delegates—Acct. No. 1020	569
Joint expenses—Acct. No. 1030	571
Senate—Acct. No. 1010	568

MISCELLANEOUS BOARDS AND COMMISSIONS

Board of architects—Acct. No. 5950	611
Board of chiropractic examiners—Acct. No. 5880	610
Board of embalmers and funeral directors—Acct. No. 5930	610

Board of examiners for practical nurses—Acct. No. 5870	610
Board of land surveyors—Acct. No. 5850	609
Board of osteopathy—Acct. No. 5910	610
Board of pharmacy—Acct. No. 5900	610
Board of professional foresters—Acct. No. 5860	610
Board of registration for professional engineers—Acct. No. 5940	611
Board of sanitarians—Acct. No. 5990	611
Human rights commission—Acct. No. 5980	611
Insurance commissioner—Acct. No. 6160	613
State fire commission—Acct. No. 6170	613
State veterinary board—Acct. No. 5960	611
West Virginia civil service system—Acct. No. 5840	609
West Virginia public employees insurance board—Acct. No. 6150	612
West Virginia public employees retirement board—Acct. No. 6140	612
Women's commission—Acct. No. 6000	612

PROTECTION

Adjutant general (state militia)—Acct. No. 5800	608
Department of public safety—Acct. No. 5700	608

ROADS AND HIGHWAYS

State department of highways—Acct. No. 6410	613
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§2. Appropriations from other funds.

PAYABLE FROM SPECIAL REVENUE FUND

Auditor's office (land department operating fund)—Acct. No. 8120	617
Department of agriculture—Acct. No. 8180	618
Department of finance and administration (division of purchasing— revolving fund)—Acct. No. 8140	617
Department of finance and administration, (information system services division fund)—Acct. No. 8151	617
Department of natural resources—Acct. No. 8300	620
Department of public safety (inspection fees)—Acct. No. 8350	621
Public service commission—Acct. No. 8280	619
Public service commission (gas pipeline division)—Acct. No. 8285	619
Public service commission (motor carrier division)—Acct. No. 8290	620
Real estate commission—Acct. No. 8010	616
State committee of barbers and beauticians—Acct. No. 8220	618
Treasurer's office—Acct. No. 8000	616
West Virginia alcohol beverage control—Acct. No. 9270	625
West Virginia Board of Regents (capital improvement fund)— Acct. No. 8845	623
West Virginia Board of Regents (certain capital improvements)— Acct. No. 8860	624
West Virginia Board of Regents (special capital improvement fund)— Acct. No. 8855	624
West Virginia board of regents (special capital improvement fund)—Acct. No. 8840	623

West Virginia board of regents (state system special capital improvement fund)—Acct. No. 8835	622
West Virginia board of regents—West Virginia University (Special capital improvement fund)—Acct. No. 8830	621
West Virginia racing commission—Acct. No. 8080	616

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 6710	614
State department of highways—Acct. No. 6700	614
State tax department (gasoline tax division)—Acct. No. 6720	615

PAYABLE FROM GENERAL SCHOOL FUND

Department of education (veterans education)—Acct. No. 7020	615
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PAYABLE FROM MEDICAL SCHOOL FUND

West Virginia University (medical school)—Acct. No. 9280	626
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PAYABLE FROM WORKMEN'S COMPENSATION FUND

Workmen's compensation commission—Acct. No. 9000	625
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§3. Awards for claims against the state.

§4. Reappropriations.

§5. Appropriations from revenue sharing trust fund.

Department of finance and administration—Acct. No. 9740	633
Department of natural resources—Acct. No. 9725	633
Farm management commission—Acct. No. 9771	633
Governor's office—Acct. No. 9721	632
State department of highways—Acct. No. 9705	632
State health department—Acct. No. 9715	632
Water development authority—Acct. No. 9743	633
West Virginia penitentiary—Acct. No. 9718	632

§6. Appropriation from countercyclical fiscal assistance trust fund.

§7. Reappropriations—"Revenue Sharing Trust Fund."

§8. Special revenue appropriations.

§9. State improvement fund appropriation.

§10. Specific funds and collection accounts.

§11. Appropriation for refunding erroneous payments.

§12. Sinking fund deficiencies.

§13. Appropriations from taxes and license fees.

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

§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.

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

LEGISLATIVE

Acct. No. 1010

1—Senate

	<i>Fiscal Year</i> <i>1979-1980</i>
1 Compensation of Members	\$ 292,000
2 Compensation and per diem of officers and	
3 employees	700,000
4 Expenses of Members	236,000
5 Current Expenses and Contingent Fund	295,000
6 Printing Blue Book	160,000
	\$ 1,683,000
7 Total	\$ 1,683,000

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

13 The appropriations for the Senate for the fiscal year
 14 1978-79 are to remain in full force and effect, and are hereby
 15 reappropriated to June 30, 1980.

16 Any balances so reappropriated may be transferred and
 17 credited to the 1979-80 accounts.

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

22 The Clerk of the Senate with approval of the President
 23 is authorized to draw his requisitions upon the Auditor,

24 payable out of the Current Expenses and Contingent Fund
 25 of the Senate, for any bills for supplies and services that
 26 may have been incurred by the Senate and not included in
 27 the appropriation bill, for supplies and services incurred in
 28 preparation for the opening, the conduct of the business and
 29 after adjournment of any regular or extraordinary session,
 30 and for the necessary operation of the Senate offices, the
 31 requisition for same to be accompanied by the bills to be
 32 filed with the Auditor.

33 The Clerk of the Senate with approval of the President
 34 shall have authority to employ such staff personnel during
 35 any session of the Legislature as shall be needed in addition
 36 to staff personnel authorized by the Senate resolution adopted
 37 during any such session. The Clerk of the Senate with
 38 approval of the President shall have authority to employ
 39 such staff personnel between sessions of the Legislature as
 40 shall be needed, the compensation of all staff personnel
 41 during and between sessions of the Legislature, notwithstand-
 42 ing any such Senate resolution, to be fixed by the President
 43 of the Senate. The Clerk is hereby authorized to draw his
 44 requisitions for the payment of all such staff personnel upon
 45 the State Auditor, payable out of the appropriation for Com-
 46 pensation and per diem of officers and employees or Current
 47 Expenses and Contingent Fund of the Senate for such services.

48 For duties imposed by law and the Senate, the Clerk of
 49 the Senate shall be paid a monthly salary as provided in
 50 Senate resolution adopted January, 1979, and payable out of
 51 the amount appropriated for compensation and per diem of
 52 officers and employees.

2—*House of Delegates*

Acct. No. 1020

1	Compensation of Members	\$	750,000
2	Compensation and per diem of officers		
3	and employees		460,000
4	Expenses of Members		390,000
5	Current Expenses and Contingent Fund		500,000
			<hr/>
6	Total	\$	2,100,000

7 The appropriations for the House of Delegates for the
8 fiscal year 1978-79 are to remain in full force and effect, and
9 are hereby reappropriated to June 30, 1980.

10 Any balances so reappropriated may be transferred and
11 credited to the 1979-80 accounts.

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

16 The Clerk of the House of Delegates, with approval of the
17 Speaker, is authorized to draw his requisitions upon the
18 Auditor, payable out of the Contingent Fund of the House
19 of Delegates, for any bills for supplies and services that may
20 have been incurred by the House of Delegates, and not
21 included in the appropriation bill, for bills for services and
22 supplies incurred in preparation for the opening of the session
23 and after adjournment, and for the necessary operation of
24 the House of Delegates offices the requisition for the same
25 to be accompanied by bills to be filed with the Auditor.

26 For duties imposed by law and by the House of Delegates,
27 including salary allowed by law as keeper of the rolls, the
28 Clerk of the House of Delegates shall be paid a monthly
29 salary as provided in House Resolution adopted January,
30 1979, payable from the Per Diem of Officers and Employees
31 Fund or the Contingent Fund of the House of Delegates,
32 and the full-time employees of the House of Delegates shall
33 be paid at the salaries provided in said resolution.

34 The Speaker of the House of Delegates, upon approval
35 of the House Committee on Rules, shall have authority to
36 employ such staff personnel during and between sessions of
37 the Legislature as shall be needed, and the Clerk of the
38 House is hereby authorized to draw requisitions upon the
39 State Auditor, payable from the Per Diem of Officers and
40 Employees Fund or the Contingent Fund of the House of
41 Delegates, for such services.

3—*Joint Expenses*

Acct. No. 1030

1	Joint Committee on Government and	
2	Finance	\$ 2,007,192
3	To pay cost of Legislative Printing	700,000
4	Other Legislative Committees	50,000
5	Commission on Interstate Cooperation	80,000
		<hr/>
6	Total	\$ 2,837,192

7 The appropriations for Joint Expenses for the fiscal year
 8 1978-79 are to remain in full force and effect and are hereby
 9 reappropriated to June 30, 1980. Any balances so reapprop-
 10 priated may be transferred and credited to the 1979-80 ac-
 11 counts.

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

JUDICIAL

4—*Supreme Court—General Judicial*

Acct. No. 1110

1	Personal Services	\$ 10,603,774
2	Other Expenses	1,640,730
3	Judges Retirement System	750,000
4	Other Court Costs	1,770,000
5	Judicial Training	
6	Program	50,000
7	Mental Hygiene Fund	225,000
		<hr/>
8	Total	\$ 15,039,504

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

14 The appropriation for Judges' Retirement System is to be
 15 transferred to the Judges' Retirement Fund, in accordance with
 16 the law relating thereto upon requisition of the Administra-
 17 tive Director of the State Supreme Court of Appeals.

18 Any unexpended balance remaining in this appropriation at
 19 the close of fiscal year 1978-79 is hereby reappropriated for
 20 expenditure during the fiscal year 1979-80.

EXECUTIVE

5—Governor's Office

Acct. No. 1200

1	Salary of Governor	\$	50,000
2	Other Personal Services		826,125
3	Current Expenses		216,042
4	Equipment		5,932
			<hr/>
5	Total	\$	1,098,099

6—Office of Economic and Community Development

Acct. No. 1210

1	Personal Services	\$	1,342,500
2	Current Expenses		2,125,000
3	Equipment		20,100
4	Federal-State Coordination		1,893,931
	Personal Services		672,113
	Current Expenses		846,800
	Repairs and Alterations ...		3,500
	Equipment		14,568
	A.R.C. Assessment		356,950
5	Office of Criminal Justice and Highway Safety		400,000
6	National Youth Science Camp		166,612
	Personal Services		64,196
	Other Expenses		102,416
7	Economic and Development Loan Fund		5,000,000
8	Regional Council—to match Federal Funds		220,000
			<hr/>
9	Total	\$	11,168,143

10 Any unexpended balance remaining in accounts "Federal-
 11 State Coordination," "Office of Criminal Justice and Highway
 12 Safety", "Regional Council to match Federal Funds", and
 13 "National Youth Science Camp" at the close of the fiscal
 14 year 1978-79 is hereby reappropriated for expenditure dur-
 15 ing the fiscal year 1979-80.

7—Governor's Office—Custodial Fund

Acct. No. 1230

1 Unclassified—Total \$ 204,140

2 To be used for current general expenses, including compen-
 3 sation of employees, household maintenance, cost of official
 4 functions, and any additional household expenses occasioned
 5 by such official functions.

8—Governor's Office—Civil Contingent Fund

Acct. No. 1240

1 Unclassified—Total \$ 500,000

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

6 Any unexpended balance remaining in this appropriation at
 7 the close of the fiscal year 1978-79 is hereby reappropriated
 8 for expenditure during the fiscal year 1979-80.

9—Governor's Office—Disaster Relief-Matching

Acct. No. 1260

1 Unclassified—Total \$ 50,000

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

10—Governor's Office—McMechen and Stonewood Relief

Acct. No. 1270

1 Any unexpended balance remaining in the appropriation for

2 "Governor's Office—McMechen and Stonewood Relief" at the
 3 close of the fiscal year 1978-79 is hereby reappropriated
 4 for expenditure during the fiscal year 1979-80.

11—*Office of Emergency Services*

Acct. No. 1300

1	Personal Services	\$	187,934
2	Current Expenses		38,910
3	Equipment		11,190
4	Total	\$	238,034

5 Any unexpended balance remaining in the appropriation
 6 "Communications Center" at the close of the fiscal year 1978-
 7 79 is hereby reappropriated for expenditure during the fiscal
 8 year 1979-80.

12—*Governor's Office*

Emergency Flood Disaster Relief

Acct. No. 1310

1 The balance remaining unexpended in this appropriation,
 2 as reappropriated for expenditure in fiscal year 1978-1979,
 3 is hereby expired.

FISCAL

13—*Auditor's Office—General Administration*

Acct. No. 1500

1	Salary of State Auditor	\$	32,500
2	Other Personal Services		1,024,006
3	Current Expenses		399,325
4	Equipment		39,700
5	Microfilm		20,000
6	Representation of Needy Persons Fund		1,500,000
7	Total	\$	3,015,531

14—*Auditor's Office—Social Security*

Acct. No. 1510

1 To match contributions of state employees for
 2 Social Security—Total \$ 5,000,000

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

11 Any unexpended balance remaining in the appropriation
 12 for "Auditor's Office—Social Security" at the close of the
 13 fiscal year 1978-79 is hereby reappropriated for expenditure
 14 during the fiscal year 1979-80.

15—*Treasurer's Office*

Acct. No. 1600

1	Salary of State Treasurer	\$	35,000
2	Other Personal Services		529,375
3	Current Expenses		242,020
4	Equipment		30,000
5	Microfilm Program		7,700
6	Total	\$	844,095

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

Acct. No. 1650

1 Total \$ 18,402,500

2 Any unexpended balance remaining in the appropriation
 3 for "Treasurer's Office—School Building Sinking Fund" at
 4 the close of the fiscal year 1978-79 is hereby reappropriated
 5 for expenditure during the fiscal year 1979-80.

17—*Municipal Bond Commission*

Acct. No. 1700

1	Personal Services	\$	61,436
2	Current Expenses		10,550
			<hr/>
3	Total	\$	71,986

18—*State Tax Department*

Acct. No. 1800

1	Personal Services	\$	3,692,854
2	Current Expenses		2,397,622
3	Equipment		66,287
4	Circuit Breaker Reimbursement		15,000
5	Unclassified		108,000
			<hr/>
6	Total	\$	6,279,763

7 The above appropriation "Unclassified" is to be used to
 8 implement Enrolled Senate Bill No. 122, Acts of the Legis-
 9 lature, Regular Session, 1979.

19—*State Tax Department*
Property Appraisal

Acct. No. 1850

1	Personal Services	\$	1,884,143
2	Other Expenses		889,583
3	Reimbursement to Counties for Computeriza-		
4	tion		80,000
5	Equipment		25,435
			<hr/>
6	Total	\$	2,879,161

7 Any unexpended balance remaining in the appropriation for
 8 "Other Expenses" at the close of the fiscal year 1978-79 is
 9 hereby reappropriated for expenditure during the fiscal year
 10 1979-80.

20—*Department of Finance and Administration*

Acct. No. 2100

1	Personal Services	\$ 2,821,811
2	Current Expenses	842,150
3	Repairs and Alterations	215,000
4	Equipment	26,500
5	Postage	750,000
6	Utilities	550,000
7	Fire Service Fee	73,965
8	Building Equipment	
9	and Supplies	25,000
10	Major Building	
11	Repairs	—0—
12	Total	\$ 5,304,426

13 The Workmen's Compensation Commission, Department of
 14 Welfare, Public Service Commission, Department of Natural
 15 Resources, Department of Motor Vehicles, State Department
 16 of Highways, State Health Department and State Tax De-
 17 partment—Income Tax Division shall reimburse the Postage
 18 appropriation of the Department of Finance and Administra-
 19 tion monthly for all meter service. Any spending unit operat-
 20 ing from Special Revenue or receiving reimbursement for post-
 21 age costs from the Federal Government shall refund to the
 22 Postage account of the Department of Finance and Adminis-
 23 tration such amounts. Should this appropriation for Postage
 24 be insufficient to meet the mailing requirements of the State
 25 spending units as set out above, any excess postage meter ser-
 26 vice requirements shall be a proper charge against the units,
 27 and each spending unit shall refund to the Postage approp-
 28 riation of the Department of Finance and Administration
 29 any amounts required for the Department for postage in ex-
 30 cess of this appropriation.

31 Any unexpended balance remaining in the "Postage Ac-
 32 count" at the close of the fiscal year 1978-79 is hereby reap-
 33 propriated for expenditure during the fiscal year 1979-80.

34 Any unexpended balances remaining at the close of the

35 fiscal year 1978-79 for "Major Building Repairs" is hereby
 36 reappropriated for expenditure during the fiscal year 1979-80,
 37 (Major Building Repairs to include maintenance and repairs
 38 to Governor's Mansion).

39 State Department of Highways shall reimburse the appro-
 40 priation of the Department of Finance and Administration
 41 monthly for all actual expenses incurred pursuant to the pro-
 42 visions of Chapter 17, Article 2-A, Section 13 of the Code of
 43 West Virginia.

21—*State Board of Insurance*

Acct. No. 2250

1	Personal Services	\$	64,200
2	Current Expenses		21,515
3	Equipment		2,000
4	Insurance Fund		2,100,000
			<hr/>
5	Total	\$	2,187,715

6 The above appropriation on line 4, is for the purpose of
 7 paying premiums, self-insurance losses, loss adjustment ex-
 8 penses and loss prevention engineering fees for property, cas-
 9 ualty and fidelity insurance for the various State agencies.
 10 Should this appropriation be insufficient to meet the require-
 11 ments of the State spending units, any excess costs shall be a
 12 proper charge against the units and each spending unit shall
 13 reimburse to the Board of Insurance any amounts required for
 14 that department for costs in excess of this appropriation.

15 Any and all of the funds appropriated for "Insurance Fund",
 16 may be transferred to a special account for the payment of
 17 premiums, self-insurance losses, loss adjustment expenses and
 18 loss prevention engineering fees.

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

LEGAL

22—Attorney General

Acct. No. 2400

1	Salary of Attorney General	\$	35,000
2	Other Personal Services		1,205,413
3	Current Expenses		180,064
4	Equipment		35,000
5	To protect the resources or tax structure of the		
6	State in controversies or legal proceedings af-		
7	fecting same		3,250
8	Consumer Protection		211,707
	Personal Services	167,455	
	Current Expenses	40,452	
	Equipment	3,800	
9	Total	\$	1,670,434

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

23—Commission on Uniform State Laws

Acct. No. 2450

1	Unclassified—Total	\$	9,000
2	To pay expenses of members of the Commission on Uniform		
3	State Laws.		

INCORPORATING AND RECORDING

24—Secretary of State

Acct. No. 2500

1	Salary of Secretary of State	\$	30,000
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APPROPRIATIONS

[Ch. 1

2	Other Personal Services	274,961
3	Current Expenses	93,014
4	Equipment	3,100
5	Regulation of Charitable Fund Raising	55,796
	Personal Services	45,796
	Current Expenses	10,000
6	Certification of Primary and General Elections	4,500
7	Publication of State Register	1,500
8	Total	\$ 462,871

EDUCATIONAL

25—State Department of Education

Acct. No. 2770

1	Teacher Education Program—Total	\$ 140,000
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26—West Virginia Board of Regents (Control)

Acct. No. 2790

1	Personal Services	\$ 90,087,682
2	Current Expenses	20,374,984
3	Repairs and Alterations	1,020,400
4	Equipment	4,000,000
5	Veterinary, Optometry, Podia-	
6	try, and Architectural Tuition	720,000
7	Bureau of Coal Research	1,000,000
8	National Research Center for	
9	Coal and Energy	1,250,000
10	Unclassified	200,000
11	Title I—Matching Funds	133,000
12	Scholarship Program	2,600,000
13	Transportation Services—	
14	Bus	240,000
15	Transportation—P.R.T.	450,000
16	Total	\$122,076,066

17 Any unexpended balance remaining in the appropriation
 18 "Moving of WWVU-TV" at the close of the fiscal year 1978-
 19 79 is hereby reappropriated for expenditure during the fiscal
 20 year 1979-80.

21 Any unexpended balance remaining in the appropriation
 22 "Washington Carver Camp" at the close of the fiscal year
 23 1978-79 is hereby reappropriated for expenditure during the
 24 fiscal year 1979-80.

27—*West Virginia Board of Regents*

Acct. No. 2800

1	Personal Services	\$	494,340
2	Current Expenses		146,881
3	Equipment		3,500
4	Total	\$	644,721

28—*West Virginia College of Osteopathic Medicine*

Acct. No. 2810

1	Unclassified—Total	\$	3,540,500
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2 Any unexpended balance remaining in this appropriation at
 3 the close of the fiscal year 1978-79 is hereby reappropriated
 4 for expenditure during the fiscal year 1979-80.

29—*Marshall University—Medical School*

Acct. No. 2840

1	Unclassified—Total	\$	2,297,323
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2 Any unexpended balance remaining in this appropriation
 3 at the close of the fiscal year 1978-79 is hereby reappropriated
 4 for expenditure during the fiscal year 1979-80.

30—*West Virginia University—Medical School*

Acct. No. 2850

1	Personal Services	\$ 9,655,700
2	Current Expenses	5,165,960
3	Repairs and Alterations	428,000
4	Equipment	267,500
5	Family Practice Residency Support Program	428,000
6	Intern and Residency Support Programs for	
7	Community Hospitals	882,750
		<hr/>
8	Total	\$ 16,827,910
9	To be transferred to the West Virginia University—Medical	
10	School Fund upon the requisition of the Governor.	

31—*State Department of Education*

Acct. No. 2860

1	Personal Services	\$ 961,534
2	Current Expenses	688,603
3	Equipment	13,000
4	National Defense Education Act	543,156
	Personal Services	419,888
	Other Expenses	123,268
5	Statewide Testing Program	142,074
	Personal Services	54,274
	Other Expenses	87,800
6	Safety Education	216,000
7	Aid to Children's Home	50,000
8	Regional Education Service Agencies	440,000
9	Project 0629-061—Identification and Remediation	
10	of Learning Disabilities	100,956
11	Project 0629-062—Diagnostic and	
12	Remediation of Learning Disabilities	118,733
13	Project 0629-067—Early Learning and	
14	Child Care	65,770
	Personal Services	64,312
	Other Expenses	1,458
15	Project 0629-077—Early Learning and	
16	Child Care	128,202

17	Project 0629-078—Early Learning and		
18	Child Care		161,135
	Personal Services	94,084	
	Other Expenses	67,051	
19	Total		\$ 3,629,163

20 The above appropriation includes the State Board of Edu-
21 cation and their executive offices.

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

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

Acct. No. 2870

1	Personal Services	\$	145,052
2	Current Expenses		36,796
3	Aid to Counties—Includes hot lunches and		
4	canning for hot lunches		1,944,000
5	Total	\$	2,125,848

33—*State Board of Education—Vocational Division*

Acct. No. 2890

1	Personal Services	\$	255,167
2	Current Expenses		99,714
3	Equipment		7,000
4	Vocational Aid		8,948,145
5	Adult Basic Education		700,000
6	Replacement of Equipment		750,000
7	Capital Outlay		800,000
8	Total	\$	11,560,026

9 Any unexpended balance remaining in the appropriation for
10 "Building Construction" at the close of the fiscal year 1978-
11 79 is hereby reappropriated for expenditure during the fiscal
12 year 1979-80.

34.—*State Department of Education—Professional Educators*

Acct. No. 2900

1 Total \$ 63,754,111

35.—*Educational Broadcasting Authority*

Acct. No. 2910

1	Personal Services	\$ 66,873
2	Current Expenses	34,689
3	Equipment	9,300
4	Regional ETV	1,682,141
5	WWVU—TV	819,085

6 Total \$ 2,612,088

7 "Regional ETV" is for participation in the construction and
 8 operation of Regional ETV stations by Marshall University,
 9 Concord College, Bluefield State College, West Virginia Insti-
 10 tute of Technology, and West Virginia State College, and the
 11 acquisition of a new FM radio station to serve the northern
 12 panhandle; and such funds may be transferred to special reve-
 13 nue accounts for matching County and/or Federal Funds.

36.—*State Board of Education—Vocational Division*

Acct. No. 2940

1 Other Expenses—Total \$ 550,000

2 Any unexpended balance remaining in this appropriation
 3 at the close of the fiscal year 1978-79 is hereby reappropriated
 4 for expenditure during the fiscal year 1979-80.

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

Acct. No. 2950

1	Professional Educators	\$222,224,421
2	Other Personnel	44,444,884
3	Fixed Charges	21,680,214
4	Transportation Charges	13,094,808
5	Administration	2,222,244

6	Other Current Expenses	26,666,931
7	National Average Attainment	25,285,875
8	Program Improvement	1,600,218
9	Increased Enrollment	1,500,000
		<hr/>
10	Subtotal	\$358,719,595
11	Less Local Share	60,067,272
		<hr/>
12	Total	\$298,652,323

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

Acct. No. 2960

1	Personal Services	\$ 238,896
2	Current Expenses	92,888
3	Out-of-State Instruction	400,000
4	Aid to Counties	6,800,000
		<hr/>
5	Total	\$ 7,531,784

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

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

Acct. No. 2970

1	Early Childhood Aides—Total	\$ 3,192,062
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40—*Teachers' Retirement Board*

Acct. No. 2980

1	Teachers' Retirement Fund—Total	\$ 30,185,000
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41—*State Department of Education*

Acct. No. 2990

1	To fund minimum salaries for Support	
2	Personnel—Total	\$ 31,993,031

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

Acct. No. 3330

1	Personal Services	\$ 2,268,053
2	Current Expenses	521,972
3	Repairs and Alterations	109,327
4	Equipment	97,621
5	Total	\$ 2,996,973

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

Acct. No. 3360

1	Personal Services	\$ 106,170
2	Current Expenses	26,815
3	Repairs and Alterations	24,900
4	Equipment	23,000
5	Total	\$ 180,885

44—*West Virginia Library Commission*

Acct. No. 3500

1	Personal Services	\$ 758,978
2	Current Expenses	173,427
3	Repairs and Alterations	3,500
4	Equipment	5,000
5	Grants-in-Aid	2,882,598
6	Library Matching Fund (Construction)	1,200,000
7	Books and Periodicals	220,000
8	Total	\$ 5,243,503
9	Any unexpended balance remaining in the appropriation	
10	for "Library Matching Fund (Construction)" at the close of	
11	the fiscal year 1978-79 is hereby reappropriated for expendi-	
12	ture during the fiscal year 1979-80.	

45—*Department of Culture and History*

Acct. No. 3510

1	Personal Services	\$ 870,671
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2	Current Expenses	696,762
3	Repairs and Alterations	25,000
4	Equipment	40,000
5	Mt. State Forest Festival	25,000
6	Theatre Arts of West Virginia	230,000
7	Alpine Festival	10,000
8	Arts and Humanities Fund	500,000
	Personal Services	95,909
	Grants and Contractural Services	404,091
9	West Virginia Water Festival	8,000
10	Tri-County Fair	5,000
11	Oil and Gas Festival	5,000
12	White Water Weekend	3,000
13	Calhoun County Wood Festival	2,500
14	New Martinsville Regatta	2,500
15	Braxton County Regatta	6,000
16	Cherry River Festival	2,000
17	Mother's Day Founders Festival	15,000
18	Mt. Heritage Arts and Crafts Fair	5,000
19	Wellsburg July 4th Celebration	2,500
20	Sternwheel Regatta	10,000
21	Sistersville Outboard Regatta	2,000
22	Ohio River Festival	2,500
23	Ripley 4th of July Festival	2,500
24	King Coal Festival	1,000
25	General Adam Stephen Memorial Association .	25,000
26	Wheeling Symphony Society—50th Anniversary	12,000
27	Independence Hall, Wheeling, West Virginia ..	100,000
28	Delf Norona Museum	30,000
29	Prickett's Fort State Park	90,000
30	Fort New Salem	2,000
31	Total	\$ 2,730,933

32 The above appropriations, Mt. State Forest Festival, Theatre
33 Arts of West Virginia, Alpine Festival, West Virginia Water
34 Festival, Tri-County Fair, Oil and Gas Festival, White Water
35 Weekend, Calhoun County Wood Festival, New Martinsville
36 Regatta, Braxton County Regatta, Cherry River Festival,

37 Mother's Day Founders Festival, Mt. Heritage Arts and Crafts
 38 Fair, Wellsburg July 4th Celebration, Sternwheel Regatta, Sis-
 39 tersville Outboard Regatta, Ohio River Festival, Ripley 4th
 40 of July Festival and King Coal Festival, shall be expended only
 41 upon authorization of the Director of the Department of Cul-
 42 ture and History and in accordance with the provisions of
 43 Chapter 5A and Chapter 12, Article 3 of the Code of West
 44 Virginia.

45 All Federal moneys received as reimbursement to the Science
 46 and Cultural Center, for moneys expended from the General
 47 Revenue Fund for Arts and Humanities are hereby reappro-
 48 priated for the purposes as originally made, including Personal
 49 Services, Current Expenses and Equipment.

50 Any unexpended balance remaining in the appropriation
 51 for "Independence Hall, Wheeling, West Virginia" at the close
 52 of the fiscal year 1978-79 is hereby reappropriated for expen-
 53 diture during the fiscal year 1979-80.

CORRECTION

46—*Department of Corrections* *Probation and Parole*

Acct. No. 3650

1	Salaries of Members of Board of		
2	Probation and Parole	\$	48,000
3	Other Personal Services		25,646
4	Current Expenses		18,745
5	Equipment		2,000
			<hr/>
6	Total	\$	94,391

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

Acct. No. 3660

1	Personal Services	\$	368,684
2	Current Expenses		81,517
3	Equipment		500
			<hr/>
4	Total	\$	450,701

48—*Department of Corrections*
Community Service
Southern Region

Acct. No. 3670

1	Personal Services	\$	494,904
2	Current Expenses		134,600
3	Repairs and Alterations		1,500
4	Equipment		2,895
			633,899
5	Total	\$	633,899

49—*Department of Corrections*

Acct. No. 3680

1	Salary of Commissioner	\$	30,000
2	Other Personal Services		399,820
3	Current Expenses		109,850
4	Repairs and Alterations		2,500
5	Equipment		1,000
			543,170
6	Total	\$	543,170

50—*Anthony Center*

Acct. No. 3690

1	Personal Services	\$	459,826
2	Current Expenses		148,340
3	Repairs and Alterations		10,700
4	Equipment		5,597
			624,463
	Total	\$	624,463

51—*West Virginia Industrial School for Boys*

Acct. No. 3700

1	Personal Services	\$	1,027,415
2	Current Expenses		301,300
3	Repairs and Alterations		47,450

APPROPRIATIONS

[Ch. 1

4	Equipment	12,950
5	Total	\$ 1,389,115

52—Davis Center

Acct. No. 3710

1	Personal Services	\$ 389,246
2	Current Expenses	154,366
3	Repairs and Alterations	17,950
4	Equipment	22,500
5	Total	\$ 584,062

53—West Virginia Industrial Home for Girls

Acct. No. 3720

1	Personal Services	\$ 481,500
2	Current Expenses	113,800
3	Repairs and Alterations	7,850
4	Equipment	8,140
5	Total	\$ 611,290

54—Leckie Center

Acct. No. 3730

1	Personal Services	\$ 404,343
2	Current Expenses	151,490
3	Repairs and Alterations	13,700
4	Equipment	10,022
5	Total	\$ 579,555

55—West Virginia State Prison for Women

Acct. No. 3740

1	Personal Services	\$ 385,906
2	Current Expenses	130,960

6	Current Expenses	892,347
7	Equipment	106,834
8	Subtotal	1,988,803
<i>Alcoholism and Drug Abuse (3910)</i>		
9	Personal Services	100,000
10	Current Expenses	500,000
11	Subtotal	600,000
<i>Maternal and Child Health (3915)</i>		
12	Personal Services	853,220
13	Current Expenses	1,713,550
14	Equipment	89,450
15	Subtotal	2,656,220
<i>Environmental Health (3920)</i>		
16	Personal Services	703,881
17	Current Expenses	205,950
18	Equipment	19,055
19	Subtotal	928,886
<i>Community Service (3925)</i>		
20	Personal Services	613,417
21	Current Expenses	224,697
22	Equipment	625
23	State Aid to Local Agencies	2,530,000
24	Nicholas County	
25	Health Center	50,000
26	Contracts for Community Mental Health-	
27	Mental Retardation Services	10,440,000
28	Study of Rehabilitation Centers	50,000
29	Subtotal	13,908,739
<i>Research and Statistics (3930)</i>		
30	Personal Services	225,961

Ch. 1]	APPROPRIATIONS	593
31	Current Expenses	15,885
32	Equipment	100
		<hr/>
33	Subtotal	241,946
<i>Institutional Service (3935)</i>		
34	Personal Services	381,863
35	Current Expenses	41,200
36	Equipment	5,925
		<hr/>
37	Subtotal	428,988
<i>State Hygienic Laboratory (3940)</i>		
38	Personal Services	299,374
39	Current Expenses	234,594
40	Equipment	22,350
		<hr/>
41	Subtotal	556,318
<i>Certification, Licensure and Inspection (3945)</i>		
42	Personal Services	518,098
43	Current Expenses	108,781
44	Equipment	4,200
		<hr/>
45	Subtotal	631,079
<i>Office of Chief Medical Examiner (3950)</i>		
46	Personal Services	327,148
47	Current Expenses	524,024
48	Repairs and Alterations	4,000
49	Equipment	15,050
		<hr/>
50	Subtotal	870,222
<i>Mental Retardation (3955)</i>		
51	Personal Services	85,600
52	Current Expenses	70,000
		<hr/>
53	Subtotal	155,600

Emergency Medical Services (3960)

54	Personal Services	207,259
55	Current Expenses	174,700
56	Equipment	4,000
57	E.M.S.—Entities—County Grants	2,200,000
		<hr/>
58	Subtotal	2,585,959
		<hr/>
59	Total	\$ 27,062,788

60 Any unexpended balance remaining in the appropriation for
 61 "Mental Health Center—Princeton", "Logan-Mingo Area
 62 Mental Health Center" and "Home Health Services" at the
 63 close of the fiscal year 1978-79 is hereby reappropriated for
 64 expenditure during the fiscal year 1979-80.

59—*Department of Veterans Affairs*
Veterans Home

Acct. No. 4010

1	Current Expenses	\$ 82,120
2	Equipment	369,900
		<hr/>
3	Total	\$ 452,020

60—*Solid Waste Disposal*

Acct. No. 4020

1	Personal Services	\$ 71,052
2	Current Expenses	35,380
3	Equipment	—0—
		<hr/>
4	Total	\$ 106,432

61—*Department of Veterans Affairs*

Acct. No. 4030

1	In aid of Veterans Day Patriotic Exercises	\$ 5,000
2	To be expended subject to the approval of the Department	

- 3 of Veterans Affairs upon presentation of satisfactory plans by
 4 the Grafton G. A. R. Post, American Legion, Veterans of
 5 Foreign Wars and and Sons of Veterans.

62—*Department of Veterans Affairs*

Acct. No. 4040

1	Personal Services	\$	509,936
2	Current Expenses		88,362
3	Equipment		3,600
4	Educational opportunities for children of War		
5	Veterans		20,000
6	Total	\$	621,898

63—*Department of Welfare*

Acct. No. 4050

1	Personal Services	\$	10,027,237
2	Current Expenses		4,797,899
3	Equipment		49,045
4	Public Assistance Grants		17,000,000
5	Social Security Matching Fund		612,042
6	Services to Children, Aged, Blind and Disabled		14,800,000
7	Indigent Burials		600,000
8	Emergency Assistance Program		700,000
9	Direct Medical Services		30,500,000
10	Total	\$	79,086,223

- 11 Item 6 above includes the funds to be used for juveniles in
 12 accordance with H. B. 1484, enacted by Acts of the Legisla-
 13 ture, Regular Session, 1979.

64—*State Commission on Aging*

Acct. No. 4060

1	Personal Services	\$	83,756
2	Current Expenses		55,107
3	Equipment		900
4	Programs for Elderly		1,449,230

5	Hawse Retirement Village—Hardy County	
6	Clinical Equipment	25,000
7	Total	\$ 1,613,993

8 Any unexpended balance remaining in the appropriation for
 9 "Senior Citizens Center" at the close of the fiscal year 1978-
 10 79 is hereby reappropriated for expenditure during the fiscal
 11 year 1979-80, with the purpose of such item to be redesign-
 12 nated: "Senior Citizens Center—land acquisition, construction,
 13 repairs or alterations."

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

Acct. No. 4120

1	Personal Services	\$ 160,500
2	Current Expenses	84,675
3	Repairs and Alterations	16,300
4	Equipment	7,800
5	Total	\$ 269,275

66—*Greenbrier School for Mentally Retarded Children*

Acct. No. 4140

1	Personal Services	\$ 869,421
2	Current Expenses	233,865
3	Repairs and Alterations	98,950
4	Equipment	41,200
5	Total	\$ 1,243,436

67—*State Health Department—Mental Hospitals*

Acct. No. 4160

1	Personal Services	\$ 17,476,711
2	Current Expenses	4,968,479
3	Repairs and Alterations	606,825
4	Equipment	267,709
5	Student Nurse Affiliation Program	
6	(Huntington)	60,130

7	Psychiatric Training Center—Student Nurses	
8	(Weston)	173,643
9	Lakin State Hospital—	
10	Capital Construction	—0—
11	Total	<u>\$ 23,553,497</u>

12 The director of health, prior to the beginning of the fiscal
 13 year, shall file with the legislative auditor an expenditure
 14 schedule for each formerly separate spending unit which has
 15 been consolidated into the above account and which receives a
 16 portion of the above appropriation. He shall also, within fif-
 17 teen days after the close of each six-month period of said
 18 fiscal year, file with the legislative auditor an itemized report
 19 of expenditures made during the preceding six-month period.
 20 Such report shall include the total of expenditures made under
 21 each of line items 1, 2, 3 and 4 above.

68—*Colin Anderson Center*

Acct. No. 4190

1	Personal Services	\$ 6,088,799
2	Current Expenses	999,885
3	Repairs and Alterations	250,945
4	Equipment	183,662
5	Total	<u>\$ 7,523,291</u>

69—*Fairmont Emergency Hospital*

Acct. No. 4250

1	Personal Services	\$ 617,927
2	Current Expenses	267,350
3	Repairs and Alterations	10,100
4	Equipment	27,130
5	Total	<u>\$ 922,507</u>

70—*Welch Emergency Hospital*

Acct. No. 4260

1	Personal Services	\$ 1,125,604
2	Current Expenses	327,013
3	Repairs and Alterations	61,500
4	Equipment	50,000
5	Total	\$ 1,564,117

71—*Andrew S. Rowan Memorial Home*

Acct. No. 4270

1	Personal Services	\$ 806,953
2	Current Expenses	418,950
3	Repairs and Alterations	54,700
4	Equipment	38,704
5	Total	\$ 1,319,307

72—*Hopemont State Hospital*

Acct. No. 4300

1	Personal Services	\$ 3,453,499
2	Current Expenses	663,725
3	Repairs and Alterations	43,700
4	Equipment	55,900
5	Total	\$ 4,216,824

73—*Pinecrest State Hospital*

Acct. No. 4310

1	Personal Services	\$ 3,116,840
2	Current Expenses	919,128
3	Repairs and Alterations	88,500
4	Equipment	24,300
5	Total	\$ 4,148,768

74—Denmar State Hospital

Acct. No. 4320

1	Personal Services	\$ 2,110,629
2	Current Expenses	615,406
3	Repairs and Alterations	58,300
4	Equipment	115,850
		<hr/>
5	Total	\$ 2,900,185

75—State Board of Education—Rehabilitation Division

Acct. No. 4400

1	Personal Services	\$ 1,941,829
2	Current Expenses	506,753
3	Rehabilitation Center	2,150,652
	Personal Services	1,676,437
	Current Expenses	449,215
	Equipment	25,000
4	Case Services	2,386,016
5	Supervisory Services for Vending Stand Pro-	
6	gram for Blind	190,266
	Personal Services	146,100
	Current Expenses	4,147
	Equipment	40,019
7	Training and Special Projects	707,637
	Personal Services	30,587
	Current Expenses	17,050
	Contractual Services	660,000
8	Social Security Matching Fund	220,000
9	Teletypewriters	27,500
		<hr/>
10	Total	\$ 8,130,653

BUSINESS AND INDUSTRIAL RELATIONS

76—Bureau of Labor and Department of
Weights and Measures

Acct. No. 4500

1	Personal Services	\$ 856,125
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APPROPRIATIONS

[Ch. 1

2	Current Expenses	243,330
3	Equipment	26,595
4	Labor Management Advisory Council	25,000
5	Total	\$ 1,151,050

77—Interstate Mining Compact Commission

Acct. No. 4510

1	Total	\$ 10,000
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78—Department of Mines

Acct. No. 4600

1	Personal Services	\$ 2,862,232
2	Current Expenses	904,650
3	Equipment	91,750
4	Special Mine Drainage Program	—0—
5	Miner Training, Education and Certification ...	151,629
6	Board of Coal Mine Health and Safety	15,000
7	Unclassified	188,100
8	Total	\$ 4,213,361

9 Any unexpended balance remaining in the appropriation
10 for "Subsidence-Federal Matching" at the close of the fiscal
11 year 1978-79 is hereby reappropriated for expenditure during
12 the fiscal year 1979-80.

13 The above line item "Unclassified" shall be expended only
14 for implementation of the provisions of Enrolled Senate Bill
15 No. 385, 1979 Regular Session of the Legislature.

79—Ohio River Basin Commission

Acct. No. 4690

1	Total	\$ 21,000
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80—Council of State Governments

Acct. No. 4720

1	Total	\$ 31,800
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81—*Interstate Commission on Potomac River Basin*

Acct. No. 4730

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

82—*Ohio River Valley Water Sanitation Commission*

Acct. No. 4740

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

83—*Southern Regional Education Board*

Acct. No. 4750

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

84—*West Virginia Air Pollution Control Commission*

Acct. No. 4760

1	Personal Services	\$	439,971
2	Current Expenses		151,662
3	Equipment		26,750
4	Total	\$	618,383

85—*Interstate Education Compact*

Acct. No. 4770

1	West Virginia's contribution to Interstate		
2	Education Compact	\$	14,250
3	To be expended upon requisition of the		
4	Governor.		

86—*Southern Interstate Nuclear Board*

Acct. No. 4780

1	West Virginia's contribution to the		
2	Southern Interstate Nuclear Board	\$	19,171
3	To be expended upon requisition of the		
4	Governor.		

87—*Department of Banking*

Acct. No. 4800

1	Personal Services	\$	388,891
2	Current Expenses		182,075
3	Equipment		5,000
4	Total	\$	575,966

88—*West Virginia State Aeronautics Commission*

Acct. No. 4850

1	Personal Services	\$	53,083
2	Current Expenses		21,985
3	Equipment		2,000
4	Aerial Markers		5,000
5	Airport Matching Fund		1,250,000
6	Civil Air Patrol Expenses		89,000
7	Total	\$	1,421,068
8	Any unexpended balance remaining in the appropriation		
9	"Airport Matching Fund" at the close of the fiscal year 1978-		
10	79 is hereby reappropriated for expenditure during fiscal year		
11	1979-80.		

89—*West Virginia Nonintoxicating Beer Commission*

Acct. No. 4900

1	Personal Services	\$	281,303
2	Current Expenses		80,000
3	Equipment		4,500
4	Total	\$	365,803

90—*West Virginia Racing Commission*

Acct. No. 4950

1	Personal Services	\$	612,800
2	Current Expenses		86,500

3	Equipment	5,000
4	Total	\$ 704,300

91—Department of Agriculture

Acct. No. 5100

1	Salary of Commissioner	\$ 32,500
2	Other Personal Services	1,525,254
3	Current Expenses	769,195
4	Equipment	92,000
5	Marijuana and Multiflora Rose Eradication 6 Program	5,000
7	Total	\$ 2,423,949

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

10 Any unexpended balance remaining in the appropriation
11 for "Marijuana and Multiflora Rose Eradication Program" at
12 the close of the fiscal year 1978-79 is hereby reappropriated
13 for expenditure during the fiscal year 1979-80.

92—Farm Management Commission

Acct. No. 5110

1	Personal Services	\$ 827,588
2	Current Expenses	812,099
3	Repairs and Alterations	270,000
4	Equipment	407,065
5	Buildings and Alterations to Buildings	—0—
6	Total	\$ 2,316,752

*93—Department of Agriculture—
Soil Conservation Committee*

Acct. No. 5120

1	Personal Services	\$ 261,888
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2	Current Expenses	74,897
3	Watershed Program	271,000
4	Total	\$ 607,785

5 Any unexpended balance remaining in the appropriation for
6 "Watershed Program," "Mud River Flood Control Project,"
7 and "Channelization of Kelley's Creek," hereinafter redesign-
8 nated as "Stream Channelization," at the close of the fiscal
9 year 1978-79 is hereby reappropriated for expenditure during
10 the fiscal year 1979-80.

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

Acct. No. 5130

1	Personal Services	\$ 597,488
2	Current Expenses	103,241
3	Total	\$ 700,729

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

95—*Department of Agriculture—Meat Inspection*

Acct. No. 5140

1	Personal Services	\$ 301,272
2	Current Expenses	127,460
3	Total	\$ 428,732

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

96—*Department of Agriculture—Agricultural Awards*

Acct. No. 5150

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

CONSERVATION AND DEVELOPMENT

97—*Geological and Economic Survey*

Acct. No. 5200

1	Personal Services	\$	658,452
2	Current Expenses		343,124
3	Repairs and Alterations		75,750
4	Equipment		119,225
5	Special Studies		660,525
			<hr/>
6	Total	\$	1,857,076

98—*Department of Natural Resources*

Acct. No. 5650

1	Personal Services	\$	7,138,721
2	Current Expenses		1,675,276
3	Repairs and Alterations		375,219
4	Equipment		420,250
5	Clarke-McNary Fire Prevention		700,000
	Personal Services	643,650	
	Other Expenses	56,350	
6	Water Resources Board and Reclamation Board		
7	of Review		30,000
	Personal Services	15,244	
	Other Expenses	14,756	
8	Implementation of Federal Surface Mine Legis-		
9	lation		250,000
	Personal Services	107,000	
	Other Expenses	143,000	
10	Clean Water Act of 1977		400,000
	Personal Services	385,009	
	Other Expenses	14,991	
11	Repairs, Replacement of Equipment and Fur-		
12	nishings on Existing Facilities		—0—
	Personal Services	—0—	
	Other Expenses	—0—	
13	Debt Service		975,000
14	Special Works Program		350,000

	Personal Services	308,000	
	Other Expenses	42,000	
15	Cass Scenic Railroad		
16	(Operation)		85,600
	Personal Services	83,873	
	Other Expenses	1,727	
17	Castleman's Run Lake, Brooke		
18	County, Improvement Survey		50,000
19	Big Ugly Public Hunting Grounds		
20	(Capital Improvements)		50,000
21	Total		\$ 12,500,066

22 Any unexpended balance remaining in the appropriations
 23 for "Park Improvements-Pipestem State Park," "Little Beaver
 24 State Park," "Beartown State Park," "Watoga State Park,"
 25 "Coopers Rock State Park," "Greenbrier State Forest," "Ka-
 26 nawha State Forest," "Seneca State Forest," "Moncove Lake
 27 Public Hunting and Fishing Area," "Pleasants Creek Public
 28 Hunting and Fishing Area," "Plum Orchard Lake Public Hunt-
 29 ing and Fishing Area," "Panther State Forest," "Piney Creek
 30 Watershed," "Bluestone State Park," "Tomlinson Run State
 31 Park," "Area Improvements-Berwind Lake Public Hunting and
 32 Fishing Area," "Park Improvement Program," "Construction,
 33 development and improvement of sewage system and water
 34 systems on state forest, parks and recreation areas," "Coal
 35 Mine Refuse Pile Removal and Reclamation," "Implementa-
 36 tion of Federal Surface Mine Legislation," "Clean Water Act
 37 of 1977," "Repairs, replacement of equipment and furnish-
 38 ing on existing facilities," "Laurel Lake Public Hunting and
 39 Fishing," "Big Ugly Public Hunting Grounds," "Kanawha
 40 State Forest," "Reeds Creek Hatchery," and "Big Ditch-Im-
 41 provements" at the close of the fiscal year 1978-79 is hereby re-
 42 appropriated for expenditure during the fiscal year 1979-80.

43 The balance remaining in the above appropriation for "Area
 44 Improvements—Berwind Lake Public Hunting and Fishing
 45 Area," as reappropriated for expenditure in fiscal year 1979-
 46 80, is hereby redesignated as to purpose and is to be expended
 47 for "Improvements and Land Acquisition—Berwind Lake Pub-
 48 lic Hunting and Fishing Area."

49 Any or all funds appropriated for "Clarke-McNary Fire
50 Prevention" may be transferred to Special Revenue Fund to
51 match and aid federal funds.

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

99—*Public Land Corporation*

Acct. No. 5660

1 Any unexpended balance remaining in the appropriations
2 for "Public Land Corporation," "Blennerhasset Island," and
3 "National Track and Field Hall of Fame" at the close of the
4 fiscal year 1978-79 is hereby reappropriated for expenditure
5 during the fiscal year 1979-80.

6 The appropriation for "National Track and Field Hall of
7 Fame," as designated in Chapter 8, Acts of the Legislature,
8 First Extraordinary Session, 1975 is hereby redesignated as
9 follows: The purpose of this bill is to provide state general
10 revenue moneys to match federal funds, county funds, municip-
11 al funds, board of education funds, or any combination there-
12 of, for the establishment of the "National Track and Field
13 Hall of Fame". Such moneys may be transferred to a special
14 fund to match and aid federal funds or other of the aforesaid
15 funds and for disbursement therefrom.

100—*Water Development Authority*

Acct. No. 5670

1	Personal Services	\$	125,764
2	Current Expenses		43,569
3	Capital Outlay		4,000,000
4	Total	\$	4,169,333

5 Any unexpended balance remaining in the appropriation for
6 "Capital Outlay" and "Phase III Hardship Grants" at the close
7 of the fiscal year 1978-79 is hereby reappropriated for ex-
8 penditure during the fiscal year 1979-80.

101—*West Virginia Railroad Maintenance Authority*

Acct. No. 5690

1	Personal Services	\$	84,538
2	Current Expenses		66,270
3	Repairs and Alterations		—0—
4	Equipment		1,000
5	South Branch Valley Railroad		
6	(Unclassified)		140,000
7	South Branch Valley Railroad		
8	(Bridge Renovation and Shop		
9	Construction)		360,000
10	Total	\$	651,808

11 The moneys appropriated in the items in this account for
 12 "South Branch Valley Railroad" purposes may be transferred
 13 to special revenue account No. 8344 for expenditure and
 14 disbursement therefrom.

15 Any unexpended balance remaining in the appropriation for
 16 "South Branch and Greenbrier Line Subdivision" at the close
 17 of the fiscal year 1978-79 is hereby reappropriated for ex-
 18 penditure during the fiscal year 1979-80.

PROTECTION

102—*Department of Public Safety*

Acct. No. 5700

1	Personal Services	\$	11,289,237
2	Current Expenses		4,478,058
3	Repairs and Alterations		244,000
4	Equipment		1,597,992
5	Emergency Fund		10,000
6	Total	\$	17,619,287

103—*Adjutant General—State Militia*

Acct. No. 5800

1	Personal Services	\$	192,596
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Ch. 1]	APPROPRIATIONS	609
2	Current Expenses	472,437
3	Repairs and Alterations	34,000
4	Equipment	16,700
5	Compensation of Commanding Officers, Cleri-	
6	cal Allowances and Uniform Allowances ...	102,035
7	Property Maintenance	627,300
8	State Armory Board	2,000,000
9	College Education Fund	150,000
10	Total	\$ 3,595,068

MISCELLANEOUS BOARDS AND COMMISSIONS

104—*West Virginia Civil Service System*

Acct. No. 5840

1	Personal Services	\$ 627,237
2	Current Expenses	275,250
3	Equipment	7,000
4	Employee Classification	64,584
5	Total	\$ 974,071

6 The director shall maintain accurate records reflecting the
7 cost of administering the provisions of this appropriation. At
8 the close of each quarter-year period, he shall summarize the
9 cost and shall bill each department, commission, board or
10 agency which receives support from any funds other than
11 General Revenue Fund for a prorata share of the administra-
12 tive cost based on the relationship between the quarterly-
13 average number of employees in the service of such depart-
14 ment, commission, board or agency and the quarterly-average
15 number of employees in the service of all the departments,
16 commissions, boards and agencies of the state for the ap-
17 propriate calendar quarter.

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

105—*West Virginia State Board of Land Surveyors*

Acct. No. 5850

1 To pay the per diem of members and

APPROPRIATIONS

[Ch. 1

2	other general expenses	\$	14,000
3	From Collections		14,000

106—*State Board of Professional Foresters*

Acct. No. 5860

1	To pay the per diem of members and		
2	other general expenses	\$	1,400
3	From Collections		1,400

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

Acct. No. 5870

1	To pay the per diem of members and		
2	other general expenses	\$	76,000
3	From Collections		76,000

108—*State Board of Chiropractic Examiners*

Acct. No. 5880

1	To pay the per diem of members and		
2	other general expenses	\$	3,775
3	From Collections		3,775

109—*State Board of Pharmacy*

Acct. No. 5900

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

110—*State Board of Osteopathy*

Acct. No. 5910

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

111—*State Board of Embalmers and Funeral Directors*

Acct. No. 5930

1	To pay the per diem of members and		
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2	other general expenses	\$	36,710
3	From Collections		36,710

112—*State Board of Registration for Professional Engineers*

Acct. No. 5940

1	To pay the per diem of members and		
2	other general expenses	\$	107,600
3	From Collections		107,600

113—*State Board of Architects*

Acct. No. 5950

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

114—*State Veterinary Board*

Acct. No. 5960

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

115—*Human Rights Commission*

Acct. No. 5980

1	Personal Services	\$	268,035
2	Current Expenses		147,675
3	Equipment		9,000
4	Total	\$	424,710

116—*West Virginia State Board of Sanitarians*

Acct. No. 5990

1	To pay the per diem of members and other		
2	general expenses	\$	1,510
3	From Collections		1,510

117—*Women's Commission*

Acct. No. 6000

1	Personal Services	\$	17,120
2	Current Expenses		10,000
			<hr/>
3	Total	\$	27,120

118—*West Virginia Public Employees Retirement Board*

Acct. No. 6140

1	Employers Accumulation Fund	\$	9,000,000
2	Expense Fund		125,000
			<hr/>
3	Total	\$	9,125,000

4 The above appropriation is intended to cover the state's
 5 share of West Virginia Public Employees Retirement cover-
 6 age for those departments operating from General Revenue
 7 Fund. The State Department of Highways, Department of
 8 Motor Vehicles, Workmen's Compensation Commission, Pub-
 9 lic Service Commission, and other departments operating from
 10 Special Revenue Funds and/or Federal Funds shall pay their
 11 proportionate share of the retirement costs for their respec-
 12 tive divisions. When specific appropriations are not made,
 13 such payments may be made from the balance in the various
 14 Special Revenue Funds in excess of specific appropriations.

119—*West Virginia Public Employees Insurance Board*

Acct. No. 6150

1	Expense Fund	\$	113,000
2	Public Employees Health Insurance—		
3	State Contribution		29,799,364
			<hr/>
4	Total	\$	29,912,364

5 The above appropriation is intended to cover the state's
 6 share of Public Employees Health Insurance costs for those
 7 Spending units operating from General Revenue Fund. The
 8 State Department of Highways, Department of Motor Vehicles,
 9 Workmen's Compensation Commission, Public Service Com-

10 mission, and other departments operating from Special Reve-
 11 nue Funds and/or Federal Funds shall pay their propor-
 12 tionate share of the Public Employees Health Insurance cost
 13 for their respective divisions. When specific appropriations are
 14 not made, such payments may be made from the balances
 15 in the various Special Revenue Funds in excess of specific
 16 appropriations.

120—*Insurance Commissioner*

Acct. No. 6160

1	Personal Services	\$	570,800
2	Current Expenses		148,790
3	Equipment		9,700
<hr/>			
4	Total	\$	729,290

121—*State Fire Commission*

Acct. No. 6170

1	Personal Services	\$	444,695
2	Current Expenses		174,453
3	Repairs and Alterations		3,050
4	Equipment		19,916
<hr/>			
5	Total	\$	642,114

ROADS AND HIGHWAYS

122—*State Department of Highways*

Acct. No. 6410

1	Unclassified-Total	\$	59,000,000
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2 Any or all of the above appropriations may be transferred
 3 to the State Road Fund for distribution.

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

123—*State Department of Highways*

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance Expressway, Trunkline and	
2	Feeder	\$ 67,000,000
3	Maintenance State Local Services and State	
4	Toll Bridges (elimination of tolls)	69,200,000
5	Inventory Revolving	1,000,000
6	Equipment Revolving	9,000,000
7	General Operations	19,000,000
8	Debt Service	81,800,000
9	Interstate Construction	173,911,000
10	Other Federal Aid Programs	103,417,000
11	Appalachian Program	69,282,000
12	Nonfederal Aid Construction	56,067,740
		<hr/>
13	Total	\$649,677,740

14 The above appropriated line items are to be expended in
 15 accordance with the provisions of Chapters 17 and 17C, Code
 16 of West Virginia, one thousand nine hundred thirty-one, as
 17 amended.

18 The State Commissioner of Highways shall have the author-
 19 ity to operate revolving funds within the state road fund for the
 20 operation and purchase of various types of equipment used
 21 directly and indirectly in the construction and maintenance of
 22 roads and for the purchase of inventories and materials and
 23 supplies.

24 There is hereby appropriated within the above items suffi-
 25 cient money for the payment of claims, accrued or arising dur-
 26 ing this budgetary period, to be paid in accordance with
 27 Chapter 14, Article 2, Sections 17 and 18, Code of West Vir-
 28 ginia, one thousand nine hundred thirty-one, as amended.

124—*Department of Motor Vehicles*

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 1,651,920
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2	Current Expenses	1,959,684
3	Equipment	73,435
4	Purchase of License Plates	588,050
5	Social Security Matching	99,779
6	Public Employees Retirement Matching	156,010
7	Public Employees Health Insurance	102,739
8	Total	\$ 4,631,617

125—*State Tax Department—Gasoline Tax Division*

Acct. No. 6720

TO BE PAID FROM STATE ROAD FUND

1	Personal Services	\$ 407,308
2	Current Expenses	98,962
3	Equipment	3,500
4	Social Security Matching	20,592
5	Public Employees Retirement Matching	37,971
6	Public Employees Health Insurance	24,181
7	Total	\$ 592,514

126—*Department of Education—Veterans Education*

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

1	Personal Services	\$ 157,443
2	Other Expenses	48,582
3	Total	\$ 206,025

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

6 Federal Funds in excess of the amounts hereby appropriated
7 may be made available by budget amendment upon request of
8 the State Superintendent of Schools and approval of the
9 Governor for any emergency which might arise in the opera-
10 tion of this Division during the fiscal year.

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

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	43,204
2	Other Expenses		30,179
3	Total	\$	73,383

128—*Real Estate Commission*

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	93,231
2	Current Expenses		37,105
3	Equipment		4,650
4	Social Security Matching		5,700
5	Public Employees Retirement Matching		8,856
6	Public Employees Health Insurance		4,000
7	Total	\$	153,542

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

129—*West Virginia Racing Commission*

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

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

5 No expenditures shall be made from this account expect for
6 hospitalization, medical care, and/or funeral expenses for
7 persons contributing to this fund.

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

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total \$ 12,000

2 The total amount of this appropriation shall be paid from
3 Special Revenue Fund out of fees and collections as pro-
4 vided by law.

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

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services \$ 605,252

2 Current Expenses 177,625

3 Equipment 38,500

4 Social Security Matching 36,788

5 Public Employees Retirement Matching 57,768

6 Public Employees Health Insurance 38,000

7 Total \$ 953,933

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

11 The above appropriation includes salaries and operating
12 expenses.

13 There is hereby appropriated from this fund, in addition to
14 the above appropriation, the necessary amount for the pur-
15 chase of supplies for resale.

132—*Department of Finance and Administration—
Information Systems Service Division Fund*

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services \$ 3,756,807

2 Current Expenses 6,408,245

3	Equipment	157,910
4	Social Security Matching	231,000
5	Public Employees Retirement Matching	356,000
6	Public Employees Health Insurance	217,950
7	Total	\$ 11,127,912

8 The total amount of this appropriation shall be paid from
 9 Special Revenue Fund out of collections made by the Depart-
 10 ment of Finance and Administration as provided by law.

133—*Department of Agriculture*

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 306,352
2	Current Expenses	27,455
3	Social Security Matching	20,000
4	Public Employees Retirement Matching	32,000
5	Public Employees Health Insurance	16,000
6	Total	\$ 401,807

7 The total amount of this appropriation shall be paid from
 8 Special Revenue Fund out of collections made by the De-
 9 partment of Agriculture as provided by law.

134—*State Committee of Barbers and Beauticians*

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$ 95,908
2	Current Expenses	49,825
3	Equipment	1,200
4	Social Security Matching	5,800
5	Public Employees Retirement Matching	8,446
6	Public Employees Health Insurance	7,903
7	Total	\$ 169,082

8 The total amount of this appropriation shall be paid from

- 9 Special Revenue Fund out of collections made by the State
10 Committee of Barbers and Beauticians as provided by law.

135—*Public Service Commission*

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salaries of Commissioners	\$	77,900
2	Other Personal Services		2,245,003
3	Current Expenses		668,575
4	Equipment		70,000
5	Social Security Matching		142,008
6	Public Employees Retirement Matching		229,827
7	Public Employees Health Insurance		98,977
			<hr/>
8	Total	\$	3,532,290

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

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

136—*Public Service Commission—Gas Pipeline Division*

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	138,952
2	Current Expenses		68,900
3	Equipment		3,500
4	Social Security Matching		6,700
5	Public Employees Retirement Matching		13,200
6	Public Employees Health Insurance		5,700
			<hr/>
7	Total	\$	236,952

- 8 The total amount of this appropriation shall be paid from
9 Special Revenue Fund out of receipts collected for or by the

- 10 Public Service Commission pursuant to and in the exercise of
11 regulatory authority over pipeline companies.

137—*Public Service Commission—Motor Carrier Division*

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	774,684
2	Current Expenses		317,250
3	Equipment		7,500
4	Social Security Matching		48,200
5	Public Employees Retirement Matching		72,225
6	Public Employees Health Insurance		42,650
7	Total	\$	1,262,509

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

138—*Department of Natural Resources*

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	2,633,508
2	Current Expenses		729,367
3	Repairs and Alterations		152,800
4	Equipment		146,464
5	Social Security Matching		160,050
6	Public Employees Retirement Matching		250,950
7	Public Employees Health Insurance		170,000
8	Land Purchase and Buildings		480,000
9	Total	\$	4,723,139

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

14 Special Funds collected at state parks. Any unexpended
 15 balances remaining in the prior appropriation item "Land
 16 Purchase and Buildings" at the close of fiscal year 1978-79
 17 and available for capital improvements and land purchase pur-
 18 poses are hereby appropriated for expenditure in fiscal year
 19 1979-80 all in accordance with Chapter 20, Article 2, Section
 20 34, Code of West Virginia.

139—*Department of Public Safety—Inspection Fees*

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	343,175
2	Current Expenses		147,339
3	Repairs and Alterations		8,700
4	Equipment		21,000
5	Social Security Matching		2,778
6	Public Employees Health Insurance		20,700
			<hr/>
7	Total	\$	543,692

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

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

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	535,942
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2 The total amount of this appropriation shall be paid from
 3 the nonrevolving Capital Improvement Fund created by the
 4 1959 Legislature, as amended.

5 Any unexpended balances remaining in the appropriations
 6 for "Creative Arts, Utilities, Roads and Parking" at the close
 7 of the fiscal year 1978-79 are hereby reappropriated for ex-
 8 penditure during fiscal year 1979-80.

141—*Board of Regents—State System
Special Capital Improvements Fund
(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service and Debt Service Reserve	\$ 2,268,485
2	Miscellaneous Campus Development Projects ..	1,310,478
3	Capital Building and Land Improvements	2,000,000
4	This appropriation is to be used by the Board	
5	of Regents at all state institutions of higher	
6	education under their supervision for capi-	
7	tal building improvements, alterations and	
8	ground improvements.	
9	West Virginia Institute of Technology, Campus	
10	Improvement	650,000
11	Excavation behind Old Main to provide 100-	
12	plus parking spaces.	
13	Potomac State College, Campus Improvement ..	450,000
14	Reroof Administration Building and Gymna-	
15	sium, renovate electrical and plumbing—	
16	Science Hall.	
17	Marshall University, Campus Development	1,050,000
18	Design fees for addition to Basic Sciences	
19	Building, relocate tennis courts, and property	
20	purchase.	
21	West Virginia University, Campus Development	2,215,000
22	Implement power management system—	
23	down-town campus, planning and preliminary	
24	design fees for Mineral and Energy Building,	
25	Business and Commerce Building, and Crea-	
26	tive Arts addition.	
27	West Virginia Northern Community College,	
28	Campus Development	1,000,000
29	Academic Building—Weirton Campus.	
30	West Virginia State College, Campus Devel-	
31	opment	650,000
32	Renovate Administration Building.	
33	The above projects are listed in a stated order of priority.	
34	Projects are to be paid on a cash basis and made available	

35 from date of passage. It is intended that only complete and
 36 usable projects be constructed and then only in the listed
 37 order of priority: *Provided, however,* That whenever the
 38 amount in the special capital improvement fund shall be
 39 sufficient to cover all capital expenditures authorized above,
 40 then the listed projects shall be considered of equal priority
 41 and all of them or any one or more, may be undertaken as
 42 soon as plans can be prepared and contracts let therefor.

43 The total amount of this appropriation shall be paid from
 44 the Special Capital Improvement Fund created by the 1971
 45 Legislature.

46 Any unexpended balances remaining in prior years and
 47 in the 1978-79 appropriation are reappropriated for expen-
 48 diture during fiscal year 1979-80.

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

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service \$ 1,676,548

2 The total amount of this appropriation shall be paid from
 3 the nonrevolving Capital Improvement Fund created by the
 4 1959 Legislature, as amended.

5 Any unexpended balances remaining in prior years and
 6 1978-79 appropriations are hereby reappropriated for ex-
 7 penditure during fiscal year 1979-80

143—*Board of Regents—Capital Improvement Fund*

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior years and
 2 1978-79 appropriations are hereby reappropriated for ex-
 3 penditure during the fiscal year 1979-80.

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

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ 4,619,616
2	Computer Network	4,072,000
3	Major items of equipment for	
4	system-wide network.	
5	Shepherd College	400,000
6	Replace heating plant in Physical Education	
7	Building, make required fire-safety	
8	corrections in Home Economics Building.	
9	West Liberty State College	100,000
10	Replace boiler in Health and Physical	
11	Education Building, make required	
12	campus-wide fire-safety corrections.	
13	West Virginia University	1,325,000
14	Upgrade fire alarm system in Hospital	
15	and Basic Sciences Building.	
16	West Virginia Institute of Technology	1,950,000
17	Addition to Engineering Building.	
18	Total	\$ 12,466,616

19 The total amount of this appropriation shall be paid from
 20 the Special Capital Improvement Fund created by the 1977
 21 Legislature.

22 Any unexpended balance remaining in prior years and in
 23 the 1978-79 appropriation are hereby reappropriated for
 24 expenditure in fiscal year 1979-80.

145—*Board of Regents—Certain Capital Improvements*

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in this account at the
 2 close of the fiscal year 1978-79 is hereby reappropriated for
 3 expenditure during fiscal year 1979-80.

146—*Workmen's Compensation Commission*

Acct. No. 9000

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1	Personal Services	\$ 3,424,000
2	Current Expenses	2,728,492
3	Equipment	83,200
4	Social Security Matching	222,560
5	Public Employees Retirement Matching	325,280
6	Public Employees Health Insurance	169,675
		<hr/>
7	Total	\$ 6,953,207

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

147—*West Virginia Alcohol Beverage Control Commission*

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Salary of Commissioner	\$ 30,000
2	Other Personal Services	7,685,125
3	Current Expenses	3,904,368
4	Repairs and Alterations	50,500
5	Equipment	212,000
6	Social Security Matching	472,635
7	Public Employees Retirement Matching	730,000
8	Public Employees Health Insurance	640,000
		<hr/>
9	Total	\$ 13,724,628

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

12 The above appropriations include the salaries of store
 13 personnel, store inspectors, store operating expenses and equip-

14 ment; and salaries, expenses and equipment of administration
15 offices.

16 There is hereby appropriated from liquor revenues, in addi-
17 tion to the appropriation, the necessary amount for the pur-
18 chase of liquor, as provided by law.

148—*West Virginia University—Medical School*

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

1	Personal Services	\$ 32,952,607
2	Current Expenses	20,096,650
3	Repairs and Alterations	1,551,500
4	Equipment	2,254,928
5	Intern and Residency Support Program for	
6	Community Hospitals	882,750
7	Family Practice Residency Support Program ..	706,407
8	Total	<u>\$ 58,444,842</u>

1 **Sec. 3.—Awards for claims against the state.**—From the
2 funds designated there are hereby appropriated for the re-
3 mainder of the fiscal year 1978-79 and to remain in effect
4 until June 30, 1980 for payment of claims against the state,
5 the following amounts as itemized:

6	(a) <i>Claims against the Board of Regents:</i>	
7	(To be paid from General Revenue Fund)	
8	Abbot Laboratories	\$ 637.72
9	Ace Glass, Inc.	\$ 71.49
10	Air Products and Chemicals, Inc.	\$ 204.37
11	The C & P Telephone Company of	
12	W. Va.	\$ 144.34
13	Central States Resources, Inc.	\$ 17,356.03
14	Climate Makers of Charleston, Inc.	\$ 903.00
15	The Crocker-Fells Company	\$ 560.86
16	Cutter Laboratories, Inc.	\$ 1,248.00
17	Lillian Dalessio	\$ 300.00
18	Diagnostic Isotopes, Inc.	\$ 81.60
19	Ehrenreich Photo-Optical Ind. Inc.	\$ 388.95

20	Fairmont Supply Company	\$	20.40
21	Hubbard Pump Co.	\$	20.89
22	Light Gallery and Supply Co.	\$	31.00
23	Roche Laboratories, Inc.	\$	1,702.50
24	State Farm Mutual Auto Insurance Co.,		
25	subrogee of Dana Lee Selvig	\$	308.99
26	Stuart's Drug & Surgical Supply Co.	\$	757.16
27	Syva, Inc.	\$	80.48
28	Uarco, Inc.	\$	713.18
29	Todd W. Ware and Taylor		
30	Publishing Co.	\$	3,096.51
31	Warren Associates	\$	23.20
32	John M. Weber	\$	3,400.00
33	Capital Business Equipment, Inc.	\$	951.06
34	(b) <i>Claims against the Department of</i>		
35	<i>Corrections:</i>		
36	(To be paid from General Revenue Fund)		
37	Bernhardt's Clothing Inc.	\$	1,986.80
38	Davis Memorial Hospital	\$	3,233.19
39	Memorial General Hospital	\$	10,077.71
40	Positive Peer Culture, Inc.	\$	26,341.15
41	Albert K. Tyre	\$	178.10
42	Alling & Cory	\$	4,401.40
43	IBM Corporation	\$	3,962.30
44	Physicians Fee Office	\$	2,956.50
45	(c) <i>Claim against the Department of</i>		
46	<i>Employment Security:</i>		
47	(To be paid from Employment		
48	Security Fund)		
49	Odlund Haney Spangler, Jr.	\$	88.50
50	(d) <i>Claim against the Department of Finance</i>		
51	<i>and Administration:</i>		
52	(To be paid from General Revenue Fund)		
53	Guyan Transfer and Sanitation, Inc.	\$	4,290.00
54	(e) <i>Claims against the Department of Health:</i>		
55	(To be paid from General Revenue Fund)		
56	American Hospital Supply	\$	424.32
57	Carl L. Baker, Jr.	\$	6,450.01

58	H. M. Curry	\$ 6,273.89
59	Jack L. Rader	\$ 4,907.41
60	Henry Elden & Associates	\$ 71,889.00
61	Charleston Area Medical Center, Inc.	\$ 20,000.00
62	Moore Business Forms, Inc.	\$ 51.42
63	Orkin Exterminating, Inc.	\$ 212.00
64	Silas C. Wiersma	\$ 1,120.00
65	(f) <i>Claims against the Department of</i>	
66	<i>Highways:</i>	
67	(To be paid from State Road Fund)	
68	William J. Adkins, Dorothy Marie	
69	Adkins, Armilda Wiley, and Dorothy	
70	Marie Adkins, as next friend of Mary	
71	Jane Adkins and Peggy Joyce	
72	Adkins	\$ 2,000.00
73	Wayne Bayliss	\$ 251.83
74	Jeffrey D. Bubar	\$ 92.24
75	The C & P Telephone Co. of W. Va.	\$ 1,399.97
76	Claywood Park Public Service District ...	\$ 162.50
77	Stanley N. Cosner	\$ 246.00
78	B. H. Cottle and B. H. Cottle, Executor	
79	of the Estate of Lucy M. Cottle,	
80	deceased	\$ 1,200.00
81	James H. Curnutte, Jr. &	
82	Deborah L. Curnutte	\$ 4,604.73
83	Rush Fields	\$ 1,142.18
84	A. M. Fredlock, II	\$ 235.20
85	Teresa K. Gillispie &	
86	Johnny Wayne Gillispie	\$ 99.13
87	Charles R. Gore	\$ 332.49
88	Halliburton Services	\$ 228.56
89	Linda E. Hamilton	\$ 92.00
90	Douglas Haney	\$ 309.50
91	Howard A. Haynes	\$ 300.19
92	Arnold G. Heater & Geraldine Heater ...	\$ 2,500.00
93	Alvin O. Hunter	\$ 223.00
94	R. L. Jarrell	\$ 291.42
95	Peggy Keyser	\$ 113.56
96	Forest Joe King	\$ 11,000.00

97	Forest Joe King, as father & next friend	
98	of Beverly King	\$ 2,500.00
99	Forest Joe King, as father & next friend	
100	of Denny Joe King	\$ 2,500.00
101	Patricia Ann King	\$ 20,000.00
102	Herman F. Lilly	\$ 1,200.00
103	Deloris J. Lively	\$ 98.88
104	Charles P. Long	\$ 43.76
105	Harold Mahaffee	\$ 94.24
106	Rhoda Raynett McIntyre	\$ 500.00
107	Morrison Printing Co. Inc.	\$ 3,000.00
108	Larry Roton	\$ 177.73
109	Mae Russell	\$ 700.00
110	James Ryan	\$ 800.00
111	Joyce Ryan	\$ 6,250.00
112	Robert Smith and Elizabeth Smith	\$ 4,000.00
113	A. A. Spagnuolo	\$ 480.00
114	Barbara H. Spitzer	\$ 300.00
115	Polly Stevens, Guardian of the Estate	
116	of James Walter Stevens and	
117	Timothy Stevens	\$ 8,450.00
118	Connie Ann Stone	\$ 176.73
119	Charles E. Taylor & Mary P. Taylor	\$ 1,566.75
120	Willard P. Teets, Attorney in Fact for	
121	Percy E. Teets	\$ 3,000.00
122	John Tillinghast & Janet Tillinghast	\$ 4,000.00
123	Vecellio & Grogan, Inc.	\$117,122.44
124	W. F. Webb	\$ 1,100.00
125	Patrick West	\$ 950.00
126	Loraine White & Velma White	\$ 1,000.00
127	(g) <i>Claim against the Department of Motor</i>	
128	<i>Vehicles:</i>	
129	(To be paid from State Road Fund)	
130	Wood County Bank	\$ 2,749.55
131	(h) <i>Claims against the Department of</i>	
132	<i>Natural Resources:</i>	
133	(To be paid from General Revenue Fund)	
134	The C & P Telephone Co. of W. Va.	\$ 442.36
135	Henry Elden & Associates	\$ 4,000.00

136	Alice Marcum	\$ 2,171.00
137	McCloy Construction Company, Inc.	\$ 27,000.00
138	Ostrin Electric Co.	\$ 997.50
139	(i) <i>Claims against the Department of</i>	
140	<i>Public Safety:</i>	
141	(To be paid from General Revenue Fund)	
142	Richard L. Cunningham	\$ 290.00
143	Joseph Larry Garrett	\$ 290.56
144	Ora T. Herron	\$ 18.00
145	Harry Glenn Lucas, Jr.	\$ 283.52
146	Lowell J. Maxey	\$ 259.20
147	The County Commission of Mason	
148	County	\$ 3,600.00
149	R. L. Smith, d/b/a Architectural	
150	Associates	\$ 879.91
151	(j) <i>Claims against the Division of</i>	
152	<i>Vocational Rehabilitation:</i>	
153	(To be paid from General Revenue Fund)	
154	Icy Mae DeWeese	\$ 202.50
155	Ethel Engegno	\$ 4,989.22
156	Rondal Fury	\$ 4,296.92
157	Ralph Keeling	\$ 4,593.88
158	Paul Leach	\$ 2,394.65
159	Ralph Parker	\$ 2,070.77
160	Elva Petts	\$ 3,985.42
161	Gertrude Preston	\$ 5,771.49
162	James Preston	\$ 5,888.75
163	Private Diagnostic Clinic (Duke	
164	University Medical Center)	\$ 399.18
165	Harry Wells	\$ 3,423.80
166	Arthur White	\$ 5,217.75
167	(k) <i>Claims against the Governor's Office—</i>	
168	<i>Emergency Flood Disaster Relief:</i>	
169	(To be paid from General Revenue Fund)	
170	Gladys Barfield	\$ 700.16
171	Thelma J. Stone	\$ 2,500.00
172	Patricia Wilson, George P. Wilson, and	
173	Gladys V. Wilson	\$ 1,200.00

174	Alert Sanitation	\$ 2,350.00
175	Alex Ray	\$ 1,175.00
176	Robert L. and Mae Massie	\$ 465.00
177	(l) <i>Claim against the Public Service</i>	
178	<i>Commission:</i>	
179	(To be paid from Special Revenue Fund)	
180	Transport Motor Express, Inc.	\$ 837.00
181	(m) <i>Claim against the Treasurer's Office:</i>	
182	(To be paid from General Revenue Fund)	
183	Patrick Plaza Dodge, Inc.	\$ 142.50
184	(n) <i>Claims against the Secretary of State:</i>	
185	(To be paid from General Revenue Fund)	
186	Eastman Kodak Co.	\$ 275.00
187	Texaco, Inc.	\$ 33.09

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 the
6 fiscal year 1979-80 with exception of the following accounts:
7 Item IX, Acct. Nos. 5651-28, 5651-32, 5651-34, 5651-37,
8 5651-38, 5651-42, 5651-43, 5651-45, 5651-49, 5651-50,
9 5651-51; and the unexpended balance in Line Item 26,
10 Item IX of the 1972 Budget Act is redesignated as to purpose
11 as follows:

12 “Upper Buffalo Fork (Marion County) Improvements, in-
13 cluding land acquisition, construction of dams, recreational
14 facilities and related facilities (Soil Conservation Service Cost
15 Participation is available).”

16 Any unexpended balances of Items I, III, IV, XI, XII,
17 XIV, XV, XVI, and XVII in the appropriations made by
18 and under the authority of Sec. 4 of the 1973 Budget Act
19 and amended under Sec. 4 of the 1977 Budget Act, are
20 hereby reappropriated for expenditure during the fiscal year
21 1979-80 with exception of the following accounts: Item
22 XV, Acct. Nos. 5651-61, 5651-62, 5651-64, 5651-65,
23 5651-66, 5651-68.

24 Any unexpended balances of Items I, III and IV in the
 25 appropriation made by and under Sec. 4 of the 1976 Budget
 26 Act are hereby reappropriated for expenditure during the
 27 fiscal year 1979-80.

1 **Sec. 5.—Appropriations from revenue sharing trust fund.**
 2 —The following items are hereby appropriated from the
 3 Revenue Sharing Trust Fund to be available for expenditure
 4 during the fiscal year 1979-80.

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

Acct. No. 9705

1	Maintenance State Local Services	\$ 19,000,000
2	Full Design Report Study, Beckley	
3	By-Pass Toll Facilities	125,000

150—*Revenue Sharing Trust Fund
 State Health Department*

Acct. No. 9715

1	Region III Community Mental Health and Training Center -	
3	Construction	\$ 1,000,000
4	Colin Anderson—Capital Outlay	700,000

151—*Revenue Sharing Trust Fund
 West Virginia Penitentiary*

Acct. No. 9718

1	New Locking System	\$ 366,000
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152—*Revenue Sharing Trust Fund
 Governor's Office*

Acct. No. 9721

1	Partnership Grants	\$ 3,500,000
2	Partnership Grants—Volunteer	
3	Fire Departments	1,000,000
4	Partnership Grants—Wyoming	
5	County Multipurpose Facility	1,250,000

153—*Revenue Sharing Trust Fund*
Department of Natural Resources

Acct. No. 9725

1	Equipment Replacement	\$	300,000
2	Water and Sewer renovation		400,000
3	Cass—Water and Sewer—Town		
4	Preservation		1,100,000
5	Watters Smith—Activities Building		
6	and Picnic Area		250,000
7	Beech Fork—Improvements & Park		
8	Development		200,000

154—*Revenue Sharing Trust Fund*
Department of Finance and Administration

Acct. No. 9740

1	T.R.I.P.	\$	1,000,000
2	Lease—Purchase—Airplane		300,000

155—*Revenue Sharing Trust Fund*
Water Development Authority

Acct. No. 9743

1	Hardship Grants—Phase III	\$	3,000,000
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156—*Revenue Sharing Trust Fund*
Farm Management Commission

Acct. No. 9771

1	Barboursville State Farm Recreation		
2	Facilities	\$	100,000

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

10 Any part of or all such amounts as deposited, including de-
11 posits through fiscal year one thousand nine hundred eighty,
12 are hereby appropriated and may be transferred to any other
13 accounts in the Governor's Office or to any other departments
14 of state government for disbursement or expenditure.

1 **Sec. 7.—Reappropriations—Revenue Sharing Trust Fund.**

2 —Any unexpended balances to the appropriations made by and
3 under Sec. 8, of the 1973 Budget Act and Supplementary Acts
4 to Chapter 10, acts of the Legislature, Regular Session 1973,
5 under Sec. 5 of the 1974 Budget Act, and Supplementary Acts
6 to Chapter Two, acts of the Legislature, Regular Session 1975,
7 under Sec. 7, acts of the Legislature, Regular Session 1976
8 and Supplementary acts to Chapter 7, acts of the Legislature,
9 Regular Session 1976, and as amended in Sec. 7 of the 1977
10 Budget Act, at the close of the fiscal year 1978-1979 are here-
11 by reappropriated for expenditure during the fiscal year 1979-
12 80, with exception of the following accounts: Acct. Nos. 9725-
13 17, 9725-19, 9725-28, 9725-37, 9725-39, 9719-06, 9719-07,
14 9736-06.

15 Any unexpended balance made by and under the provisions
16 of Sec. 5 of the 1979 Budget Act in the appropriation—
17 “Acct. No. 9715—Pinecrest State Hospital” is hereby redesign-
18 ated to the purpose: “Pinecrest State Hospital—repair, reno-
19 vation and equipment of existing facility.”

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

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

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

1 **Sec. 9.—State improvement fund appropriations.**—Bequests
2 or donations of nonpublic funds received by the Governor on
3 behalf of the State during the fiscal year one thousand nine
4 hundred eighty for the purpose of making studies and recom-
5 mendations relative to improvements of the administration and
6 management of spending units in the executive branch of state
7 government, shall be deposited in the state treasury in a sep-
8 arate account therein designated "State Improvement Fund."

9 There is hereby appropriated all moneys so deposited dur-
10 ing the fiscal year one thousand nine hundred eighty, to be
11 expended as authorized by the Governor, for such studies and
12 recommendations which may encompass any problems of or-
13 ganization, procedures, systems, functions, powers or duties
14 of a state spending unit in the executive branch, or the better-
15 ment of the economic, social, educational, health and general
16 welfare of the State or its citizens.

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

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

5 When the officer authorized by law to collect money for
6 the state finds that a sum has been erroneously paid, he shall
7 issue his requisition upon the auditor for the refunding of the
8 proper amount. The auditor shall issue his warrant to the trea-
9 surer and the treasurer shall pay the warrant out of the fund
10 into which the amount was originally paid.

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

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

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

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

1 **Sec. 14.—Appropriations to pay costs of publication of**
2 **delinquent corporations.**—There is hereby appropriated out of
3 the state fund, general revenue, out of funds not otherwise ap-

4 appropriated, to be paid upon requisitions of the auditor and/or
5 the governor, as the case may be, a sum sufficient to pay the
6 cost of publication of delinquent corporations as provided by
7 Chapter 11, Article 12, Sections 84 and 86 of the Code of
8 West Virginia.

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

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

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

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

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

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

7 Where former spending units have been absorbed by or
8 combined with other spending units by acts of this Legisla-
9 ture, it is the intent of this act that reappropriation shall be
10 to the succeeding or later spending unit created unless other-
11 wise indicated.

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

RESOLUTIONS

SENATE CONCURRENT RESOLUTION NO. 1

(By Mr. Davis, Mr. Gainer and Mr. Moreland)

[Adopted April 11, 1979]

Urging the Congress of the United States and the President of the United States to designate West Virginia as the site of the proposed experimental coal liquefaction plant.

WHEREAS, The State of West Virginia has abundant coal reserves which are not presently being mined; and

WHEREAS, The people of West Virginia are dependent to a great extent on the mining of coal for their livelihood and their economic well-being; and

WHEREAS, The people of West Virginia have demonstrated their technical proficiency and their willingness to mine coal over the course of several generations; and

WHEREAS, The nation has an urgent and immediate need for the development of alternative sources of energy to replace the dwindling world supply of crude oil; and

WHEREAS, The estimated cost of converting coal to commercially usable gas and oil compares favorably with the current price of imported crude oil; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress and the President of the United States are hereby urged to appropriate and to authorize funds necessary to construct an experimental coal liquefaction plant in the State of West Virginia; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the President of the United States and to West Virginia's representatives in the Congress.

HOUSE RESOLUTION NO. 6

(By Mr. Speaker, Mr. See)

[Adopted April 11, 1979]

Directing the Committee on Rules, Committee on Finance and Committee on the Judiciary to meet between the regular session of the Legislature held in the year one thousand nine hundred seventy-nine and the regular session of the Legislature to be held in the year one thousand nine hundred eighty.

WHEREAS, The House of Delegates has by rule created standing committees, including the Committee on Rules, the Committee on Finance and the Committee on the Judiciary; and

WHEREAS, The Joint Committee on Government and Finance on its own motion has directed, and may direct, that certain matters of government and finance should be studied and surveyed by joint standing committees or joint subcommittees of such joint standing committees, to be composed of certain standing committees of the respective houses, or subcommittees thereof; and

WHEREAS, It is appropriate to authorize the Committee on Rules, the Committee on Finance and the Committee on the Judiciary to sit between regular sessions; therefore, be it

Resolved by the House of Delegates:

That the Committee on Rules, the Committee on Finance and the Committee on the Judiciary of the House of Delegates, created by Rule 77 of the Rules of the House of Delegates, be and they each are hereby directed to meet between the regular session of the Legislature held in the year one thousand nine hundred seventy-nine and the regular session of the Legislature to be held in the year one thousand nine hundred eighty, at such times and places as the Speaker of the House of Delegates shall direct; and, be it

Further Resolved, That in accordance with section one-a, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the Clerk of the House of Delegates is hereby authorized to draw his requisitions upon the Auditor for travel expenses of members of the House of Delegates serving on such committees or subcommittees as authorized, from time to time,

by the Committee on Rules and for the payment of staff, as directed, from time to time, by the Speaker; and, be it

Further Resolved, That the authority of this resolution shall be in addition to the authority for meetings of joint standing committees or joint subcommittees thereof under the supervision of the Joint Committee on Government and Finance pursuant to subsections (b) and (c), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

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, 1979

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
703.....	1	928.....	85	1280.....	98
705.....	29	929.....	45	1286.....	115
706.....	28	939.....	122	1295.....	110
715.....	82	947.....	121	1325.....	20
716.....	88	952.....	55	1351.....	61
721.....	114	1003.....	72	1363.....	42
743.....	34	1036.....	54	1381.....	96
767.....	78	1046.....	112	1386.....	90
781.....	23	1047.....	111	1394.....	101
795.....	58	1060.....	19	1404.....	71
807.....	87	1067.....	4	1420.....	92
817.....	41	1103.....	93	1428.....	94
825.....	104	1116.....	107	1443.....	11
854.....	64	1119.....	48	1444.....	10
855.....	79	1153.....	12	1452.....	15
859.....	36	1166.....	49	1455.....	9
863.....	39	1168.....	5	1484.....	14
871.....	59	1200.....	38	1499.....	7
873.....	35	1243.....	25	1509.....	24
893.....	106	1248.....	52	1518.....	8
900.....	81	1253.....	30	1541.....	40
920.....	105	1254.....	22	1542.....	63
926.....	31	1256.....	89		

DISPOSITION OF BILLS ENACTED

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1	33	170	26	408	62
2	69	185	57	424	37
3	46	195	113	428	109
5	86	202	118	453	43
6	44	211	53	473	97
57	21	213	76	474	6
72	100	251	74	488	91
75	66	260	95	492	51
88	60	288	67	496	70
94	77	297	32	518	2
99	119	305	27	523	16
100	80	307	84	524	17
101	68	317	13	526	50
102	47	338	18	539	120
110	116	366	56	551	117
122	108	385	83	558	73
125	102	389	99	559	65
132	3	390	103	563	75

First Extraordinary Session, 1979

HOUSE BILLS

Bill No.	Chapter
101	1

INDEX

	Ch.	Page
ACCOUNTING CORPORATIONS:		
See Professions and Occupations.		
ACTIONS AND SUITS:		
Lis pendens		
Limitations on notice of	1	1
AIR POLLUTION CONTROL:		
Commission		
Composition	2	5
Employees		
Appointment	2	6
Duties	2	6
Salaries	2	6
Legal Services		
Attorney General, assistants and prosecuting attorneys to render gratuitous	2	10
Meetings	2	6
Members		
Appointment	2	5
Compensation	2	6
Expenses		
Reimbursement	2	6
Terms of office	2	5
Vacancies	2	5
Officers	2	6
Powers and duties	2	7
Proceedings	2	6
Rules and regulations governing	2	6
Rules and regulations		
Effective date	2	10
Failure to comply		
Penalties	2	11
Hearing on	2	10
Notice	2	10
Not to be more stringent than federal rules and regulations	2	7
Definitions	2	3
Federal Clear Air Act		
Plans for implementation	2	9
Interstate Compact		
Repealed	3	12
Policy and Purpose		
Declared	2	3
Violations	2	4
AMTRAK:		
Resolution expressing concern and disapproval of the Legislature on the planned cutback of passenger service in West Virginia		554
ANATOMICAL GIFTS:		
See Uniform Anatomical Gift Act.		
ANIMALS:		
Abandoned, neglected or cruelly treated	4	12
Humane officers to take charge of	4	12
Notice by, to owners	4	12
Cruelty to		
Definitions	4	12

APPROPRIATIONS:	Ch.	Page
Budget Bill		
Making general appropriations for fiscal year 1979-1980	1	561
Index to, by accounts	1	563
Supplementary (1978-79 Budget)		
Board of Regents (control), personal services, current expenses and equipment	5	14
Public Safety, personal services and current expenses	6	15
Welfare, Department of Direct medical services	7	16
Supplementing, amending and transferring amounts between items of prior appropriations made to the 1978 Budget Bill		
Health, Department of	8	17
Highways, Department of	9	18
Industrial School for Boys	10	19
Penitentiary	11	20
 ARCHITECTS:		
See Professions and Occupations.		
 ASSESSMENT:		
See Taxation.		
 BIRTH CERTIFICATES:		
See Vital Statistics.		
 BOARD OF REGENTS:		
Faculty members, probationary		
Defined	41	103
Retention or nonretention	41	102
Appeal	41	103
Decision		
Time within which rendered	41	103
Rules governing conduct	41	103
Notice	41	102
Scholarships		
Award limitation	39	99
Entrance into reciprocal agreements with other states	39	99
Financial assistance	39	99
Eligibility standards	39	99
Security officers on property under jurisdiction of		
Appointment	40	100
Gun permit	40	101
Oath	40	101
Powers and authority	40	101
Qualifications	40	101
Removal and termination of employment	40	102
Notice	40	102
Salary	40	101
 BUDGET BILL:		
See Appropriations.		
 BUILDING AND LOAN ASSOCIATIONS:		
License tax on domestic and foreign corporations		
Payment to Secretary of State	102	355
 BURGLARY:		
With intent to commit sexual assault		
See Crimes and Offenses.		

CEMETERIES:

State cemetery for veterans
See Veterans.

Ch. Page

CHECKS:

Dishonored

Notice by payee or holder to drawer	30	77
Proof	30	78
Payment of	30	79
Prior to trial	30	79
Receipt for	30	79
Service charge		
Prohibited after filing complaint for warrant	30	79
Warrant		
Complaint for	30	78
Notice by magistrate court	30	78
Form	30	78
When complete	30	78
When not to issue	30	79

CHILD WELFARE:

Children

Assistance paid for benefit of		
Debt due Department of Welfare	13	24
Amount	13	25
Limitation	13	25
Exception	13	25

Juvenile Offenders

See Juvenile Offender Rehabilitation Act.

Support obligations

Assignment to Department of Welfare	13	24
Amount	13	24
Notification to applicant	13	24
Release	13	25
Notification by Department	13	25
Subrogation of Department to rights of child	13	25

CHIROPRACTORS:

See Professions and Occupations.

CLAIMS AGAINST THE STATE:

Finding claims against certain state agencies to be
moral obligations and directing payment

Board of Regents	16, 17	35, 41
Department of Corrections	16, 17	35, 41
Department of Health	16, 17	36, 41
Department of Highways	16	36
Department of Motor Vehicles	16	38
Department of Natural Resources	16	38
Department of Public Safety	16, 17	38, 41
Division of Vocational Rehabilitation	16	38
Governor's Office—Emergency Flood Disaster Relief	16	39
Public Service Commission	16	39
Secretary of State	17	41
Treasury Department	16	39

COAL:	Ch.	Page
Resolution urging the Congress of the United States and the President of the United States to designate West Virginia as the site of the proposed experimental coal liquefaction plant		639
Resolution urging the Environmental Protection Agency to take prompt action to fully protect the rights of West Virginia coal producers to sell their coal to utility customers in Ohio		556

CODE AMENDED:

Ch.	Art.	Sec.		Page
3	1	3	Voting privileges for paupers	115
4	1	1	Interim meetings of legislative committees	191
4	1	21*	Permitting members and members-elect of the Legislature to prefile bills and resolutions	194
4	2A	2-10	Legislative salaries and expenses	196
4	3	3a*	Interim powers and duties of Joint Committee on Government and Finance	193
4	10*		Sunset Law	383
5	1	25	Commencement and termination of daylight saving time	85
5	10	48	Amount of reemployment compensation permissible following retirement	294
5	20*		Continuance of Governor's Commission on Willow Island	529
5A	1	2	Removing limits on salary of director of purchasing division	128
6	9A	6	Open governmental proceedings	269
7	1	3y*	County Commissions authorized to grant funds for nutritional programs operated by nonprofit legal entities	65
7	7	16	Mileage allowance for county officials and employees	66
7	7	22*	Direct deposit of county officials' and employees' compensation	525
7	10	4	Definition of cruelty to animals	12
7	12	11	Transfer of land by county commissions for recreational development	67
8	22	2	Allowing establishment of an employee retirement and benefit fund by Class III cities	254
8	24	9	Quorum requirement for conduct of planning commission meetings	255
9	3	4*	Assignment of child support obligations to the Department of Welfare	24
9A	3*		Establishing a state cemetery for veterans	519
11	3	2a*; 24	Notice of increased ad valorem assessment, review and equalization by county commissions	393
11	4	2, 10, 11	Form of landbooks, assessment of land and buildings separately, assessment of new buildings	396
11	5	11*, 12*	Assessment of mobile homes	397
11	10	4	Definition of terms within the Tax Procedure and Administration Act	398

* Indicates new chapter, article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.	Page
11	15	9; 11*	Exemptions generally and exempting food for human consumption from consumers sales tax 401
11	15	21, 22	Filing of schedule showing sales and tax collections by persons operating two or more businesses 408
11	15A	3	Use tax exemptions 407
11	19	5a*	Due date of soft drinks tax reports, additional reports and extension of time for filing same 410
11	21	9	Personal income tax terms 411
11	24	3	Corporation net income tax terms 412
11A	3	20a	Refund of purchase price of nonexistent or erroneously assessed land 414
12	1	2, 3, 10, 12	Depositories for demand and interest earning deposits, treasurer to keep accounts, when treasurer may make funds available to board of investments 178
12	2	2, 3, 4	Itemized record of moneys received for deposit, deposit by treasurer and duty of depositories 183
12	3	1	Manner of payment of money from treasury 185
12	3	19	Prohibiting general orders for payrolls by county commissions, etc. 526
12	6	2, 9, 11, 13	Definitions, permissible investments, apportionment of interest earning deposits among depositories and Board of Investments sole agency for investments 186
13	3	9, 11	Withdrawal by bond issuers of additional funds from the Municipal Bond Commission 21
14	2	8	Compensation of Judges of the Court of Claims 33
15	2	5	Leave time for duty training in the national guard 298
15	2	6	Subpoena powers for members of the appeals board 301
16	1	7	Prohibiting promulgation of rules and regulations restricting subdivision or development of certain land 136
16	3	5	Distribution of free vaccine preventives of disease 138
16	4C	4	Registered and practical nurses permitted to accompany patients in ambulances ... 121
16	5	12, 19	Registration of births and deaths 521
16	5A	6*, 7*, 8*, 9*, 10*	Use of marihuana for treatment of glaucoma and cancer chemotherapy patients 140
16	5C	2	Definitions, nursing and personal care home law 256
16	5F*		Public disclosure of financial status of certain health care facilities 143
16	8*		Practice of electrology or electrolysis ... 116
16	19	4	Enucleation of eyes by embalmers and funeral directors 118

* Indicates new chapter, article or section.

CODE AMENDED--(continued):

Ch.	Art.	Sec.		Page
16	20	1, 2, 3, 4, 5, 8	Bringing West Virginia Air Pollution Control law into compliance with federal law	2
17A	3	11	Removing gross weight stencil requirement from trucks	249
17C	1	60*, 61*, 62*	Defining certain words and phrases	416
17C	2	3	Enforcement of traffic laws	416
17C	5	1, 3	Negligent homicide and reckless driving penalties	417
17C	15	26	Special restrictions on motor vehicle headlamps	250
17D	3	5	Security following accident	158
17D	4	1	Prohibiting suspension or revocation of vehicle registration under certain conditions	252
17D	4	2, 7, 12, 16	Proof of financial responsibility	159
18	4	7	Location of office of superintendent and county board of education	90
18	5	4	Preliminary hearing on operating budget of county boards of education	91
18	5	15	School terms	94
18	5	18a*	Maximum teacher-pupil ratio	97
18	13	1	Continuation, management, courses and degrees of West Virginia State College	295
18	22B	6	Authority of Board of Regents to enter into reciprocal agreements with other states concerning scholarships	98
18	26	8a	Preservation of law and order by university security officers	100
18	26	8c*	Notice to probationary faculty members of retention or nonretention	102
18A	4	2a	State supplemental salary schedule	96
18A	4	3	Salary increase for principals for supervision of teachers	104
18A	4	8a	Minimum monthly pay scale for school auxiliary and service personnel	105
18A	4	10	Use of personal leave by teachers and other employees	108
18A	5	1a*	Assaults by pupils on teachers and other personnel	111
19	23	8a*	Local option election on Sunday racing	149
20	4	4a*	Time limitation on commissary contracts with private concerns	270
20	4	13*	Transferring a portion of Washington-Carver Camp to Department of Natural Resources	296
20	5A	1	Water pollution control standards	236
20	6	1	Surface mining and reclamation vested in Department of Natural Resources, assistance to small coal operators	223
20	6	23b*	Surface effects of underground coal mining operations	230
20	7	11, 12, 15	Registration of motorboats by Department of Motor Vehicles	243
21	5	3	Payment of wages by employers other than railroads	526

* Indicates new chapter, article or section.

CODE AMENDED—(continued):

Ch.	Art.	Sec.		Page
21	9	3, 4, 9	Mobile home dealers required to install smoke detection systems in mobile homes offered for sale	237
21A	1	3	Definitions	419
21A	5	17c	Service of process on nonresident employer	354
21A	6	1, 10	Eligibility qualifications, benefit rates for total unemployment	439
21A	9	5a	Employment security special administration fund	446
22	1	4	Powers and duties, Director of Department of Mines	226
22	2A	7*	Compensation and expenses of members of the Board of Coal Mine Health and Safety	235
22	4	1, 1a, 1b	Creation of Office of Oil and Gas	259
23	1	18*	Workmen's Compensation Advisory Board	535
23	4	1c, 1d, 7a, 9	Payment of disability and death benefits	537
23	4A	1	Disabled workmen's relief fund	543
24	1		General provisions relating to the Public Service Commission	308
24	2	1, 3; 3a*; 4; 4a*; 4b*; 7, 8, 11, 13, 15	Powers and duties of the Public Service Commission	320
24	3	6, 7	Special license fee, Public Service Commission fund permit to abandon service, certificate	335
24	5	1	Review of final orders of Commission	336
24	6*		Local emergency telephone system	345
24A	2	2a*; 5	Regulation of towing, hauling or carrying wrecked vehicles, certificate of convenience and necessity	337
24A	6	6	Assessment against motor carriers for expenses of administering chapter	340
24B	4	6	Penalties for violation of chapter	343
24B	5	1, 2, 3	Employees of commission, compensation of commissioners, funding	343
27	1	14*, 15*	Definitions	205
27	5	1; 1a*; 2, 3, 4	Involuntary hospitalization	206
27	6A	2	Commitment of persons charged or convicted of a crime, hearing on competency to stand trial	220
28	5	28	Commutation of prisoners' sentence for good conduct	63
29	1	13*	Transferring to the Public Land Corporation, for supervision, a portion of Washington-Carver Camp	297
29	1E	1, 2, 3, 5; 10*	Changing the name of the Southern Interstate Nuclear Compact to the Southern States Energy Compact	371
30	1	16*	Limiting liability of members of peer review and professional standards committees	276
30	3	4	Temporary permits to practice medicine or surgery	277
30	9	4a*	Accounting corporations	280
30	12	8a*	Practice of architecture	282

* Indicates new chapter, article or section.

CODE AMENDED--(continued):

Ch.	Art.	Sec.	Page
30	16	4	Application for license to practice chiropractic 283
30	17		Board of registration for sanitarians 285
31	1	49	Transaction of business by foreign corporations and acts permitted without certificate of authority 59
31	6	38	License tax on domestic and foreign corporations 355
31	10	7	Fiscal year of credit unions, meetings, voting, proxies and amending bylaws 75
31	10	21	Declaration by credit union boards of directors of intervals and periods when dividends to be paid 76
31	18	20	Authorized limit on borrowing by the Housing Development Fund 152
32	4	414	Scope of chapter and service of process 355
33	2	9; 9a*	Examination of insurers, agents, brokers and solicitors and permitting an additional premium tax credit to insurance companies 169
33	4	13	Service of process on unlicensed insurers 358
33	6	31; 31a*	Motor vehicle policies to include omnibus clause and rates charged for uninsured motorist coverage 163
33	6A	4	Nonrenewal of automobile insurance policies in effect two consecutive years or longer 172
33	14	3	Increasing amount of debtors' life insurance 175
36	4	9a	Cancellation of oil or gas leases for nonpayment of delay rental 265
38	1A	9	Action by secretary of state following service 363
38	5A	3	Suggestions of salary and wages of persons engaged in private employment 130
38	5B	2	Suggestions of the State and political subdivisions; garnishment and suggestion of public officers 131
44	6A*		Uniform Management of Institutional Funds 153
46	1	201	General provisions and definitions, Uniform Commercial Code 450
46	5	114	Issuer's duty and privilege to honor letters of credit 457
46	8	102, 103, 104, 105, 106, 107; 108* 201, 202, 203, 204, 205, 206, 207, 208, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320; 321*; 401, 402, 403, 404, 405, 406; 407*; 408*	Investment securities, Uniform Commercial Code 460

* Indicates new chapter, article or section.

CODE AMENDED--(continued):

Ch.	Art.	Sec.	Page
46	9	103, 105, 203, 302, 304, 305, 309, 312	Security interests in secured transactions, Uniform Commercial Code 505
46A	1	102	General definitions and provisions, Con- sumer Credit and Protection Act 42
46A	1	104	Applicability of Consumer Credit and Pro- tection Act to consumer transactions involving revolving charge and loan accounts 56
46A	2	137	Service of process on certain nonresidents 363
46A	4	107, 111	Loan finance charge for supervised lenders, maximum interest rate when loan ex- ceeds one thousand five hundred dol- lars 53
47	6	10; 11*	Removing right to defense of usury from corporations, partnerships and limited partnerships 349
47	11D*		Motion Picture Fair Competition Act 239
47	17	5	Acceptance of successor dealers 350
48	2A*		Protection from domestic abuse 86
49	4		Welfare of handicapped children 132
49	5B*		Juvenile Offender Rehabilitation Act 26
51	1	10a	Salaries, Justices of the Supreme Court ... 68
51	2	1	Additional Judge for both the tenth and eleventh circuit 70
51	2	13	Salaries, Judges of Circuit Courts 69
51	9	6c*; 16	Benefits for retired Judges and Justices not to be increased by virtue of certain salary increases 69
54	1	2	Public uses for which private property may be taken 124
55	11	3*	Limitations on notice of lis pendens 1
56	3	31; 33	Actions by or against certain nonresident operators of motor vehicles involved in accidents or having certain contacts with this State 365
60A	2	210	Adding pentazocine to Schedule IV of the Controlled Substances list 57
61	2	15*	Assault, battery upon school employees 114
61	3	39g	Dishonored checks, notice of complaint, issuance of warrant, payment procedures and costs 77
61	8C*		Penalties for filming and distribution of sexually explicit conduct of minors 80
62	9	9	Form of indictment for burglary with in- tent to commit sexual assault 83
62	12	2, 13	Ineligibility for probation or parole for certain offenses committed with the use of a firearm 271
CODE REPEALED:			
11	19	3	Soft drink permits 410
27	5	2a, 6, 8	Probable cause hearing, examination of newly admitted patients, periodic ex- amination 205
29	1G		Interstate Compact on Air Pollution 12
44	6	2a, 2b	Circumstances under which fiduciaries may invest, commingle or consolidate trust funds 152

* Indicates new chapter, article or section.

	Ch.	Page
CONSUMER CREDIT AND PROTECTION:		
Charge and loan accounts		
Applicability of act to consumer transactions involving	19	56
Definitions	18	42
Lenders, supervised		
Loan finance charge for	18	53
Maximum interest rate	18	55
Nonresidents		
Secretary of State		
Attorney-in-fact	102	363
Service of process	102	363
CONTROLLED SUBSTANCES:		
Marihuana		
See Health.		
Pentazocine		
Included in Schedule IV	20	57
Therapeutic Research Program		
See Health.		
CORPORATIONS:		
Certificate of authority		
Acts permitted done by foreign corporations without	21	60
Denial of, to foreign corporations	21	59
CORRECTIONS:		
Commutation committee		
Composition	22	63
Established	22	63
Overtime work assignment committee		
Composition	22	64
Established	22	64
Prisoners		
Classification of, for good conduct	22	63
By commutation committee	22	64
Misconduct		
Commutation of time denied, due to	22	64
Removal from overtime job assignment, due to	22	64
Appeal to committee	22	64
Sentences		
Commutation of time for good conduct	22	63, 64
Cumulative		
Commutation as one	22	63
COUNTY COMMISSIONS:		
County Development Authority		
Appointment	25	67
Recreational development		
Transfer of property for	25	67
County officials		
Performance of official duties		
Mileage allowance granted for use of personal vehicle	24	66
Nutrition programs		
Authority to make grants for	23	65
COUNTY DEVELOPMENT AUTHORITY:		
See County Commissions.		

COUNTY OFFICIALS AND EMPLOYEES:		Ch.	Page
Compensation			
Direct deposit into financial institutions	119		525
General order by county commissions, etc.	119		526
Written request for	119		525
 COURT OF CLAIMS:			
Judges			
Compensation and expenses	15		33
 COURTS:			
Circuit courts			
Judges			
Election	27		74
Eleventh circuit	27		71
Increasing salaries	26		69
Number in judicial circuits	27		70
Retirement benefits to disabled Judges	26		69
Tenth circuit	27		71
Terms of office	27		72
Supreme court			
Judicial circuits			
Submission of plan of rearranging, to Legislature	27		75
Justices			
Increasing salaries	26		68
Retirement benefits to disabled Justices	26		69
 CREDIT UNIONS:			
Bylaws			
Amendment of	28		76
Dividends			
Declaration of payment			
By Board of Directors	29		77
Fiscal year			
Termination	28		75
Meetings			
Annual	28		76
Notice	28		76
Special	28		76
Votes			
Number	28		76
Proxy			
Prohibited	28		76
 CRIMES AND OFFENSES:			
Burglary			
Breaking and entering			
Form of indictment	32		84
Indictment			
Form	32		83
Intent to commit larceny			
Form	32		83
Intent to commit sexual assault			
Form	32		83
Checks, worthless			
See Checks.			

CRIMES AND OFFENSES—(continued):	Ch.	Page
Sexual conduct		
Definitions	31	80
Minors		
Defined	31	80
Exhibition of material depicting	31	82
Penalties	31	82
Additional	31	82
Filming sexual conduct		
Penalties	31	81, 82
Use of		
Penalties	31	81, 82
 DAYLIGHT SAVING TIME:		
Commencement and termination	33	85
 DEATH CERTIFICATES:		
See Vital Statistics.		
 DOMESTIC RELATIONS:		
Abuse, household		
Defined	34	86
Jurisdiction of magistrate and circuit courts in proceedings	34	87
Protective orders of court	34	88
Violations	34	90
Penalties	34	90
Purpose of article	34	86
Relief		
Not affected by complaining party leaving household	34	87
Petition	34	87
Form	34	87
Hearings	34	88
Respondent named may file counterclaim	34	87
Temporary orders of court after filing	34	88
Testimony of husband and wife	34	90
 EDUCATION:		
See Schools.		
 ELECTIONS:		
Vote		
Persons entitled	46	115
 ELECTROLOGY AND ELECTROLYSIS:		
Defined	47	116, 117
Practice of		
Regulations by State Department of Health to govern	47	117
 EMBALMERS AND FUNERAL DIRECTORS:		
Enucleation of eyes		
See Uniform Anatomical Gift Act.		

	Ch.	Page
EMERGENCY MEDICAL SERVICES:		
Attendants		
Certificates		
Emergency Medical Service Attendant		
Issuance	49	123
Period of validity	49	123
Renewal	49	123
Temporary	49	123
Period of validity	49	123
Extension	49	123
Fees prohibited	49	123
Certification	49	122
Determination of qualifications for	49	123
Examination for	49	123
Fees for prohibited	49	123
Qualification	49	122
Determination by director	49	123
EMERGENCY TELEPHONE SYSTEM:		
Costs related to system	99	348
Creation of system	99	347
Definitions	99	346
Emergency services accessible by system	99	347
Legislative findings	99	345
Plan establishing system		
Adoption of, by Public Service Commission	99	347
Purpose of article	99	346
EMINENT DOMAIN:		
Private property		
Taking or damaging		
Public uses permitted	50	124
FAYETTE COUNTY:		
Washington-Carver Camp		
Transfer of portions	95	296
FILMS:		
Minors		
Depicting sexual conduct		
See Crimes and Offenses.		
FINANCE AND ADMINISTRATION:		
Commissioner		
Appointment	51	128
Compensation	51	128
Term	51	128
Purchasing division		
Director	51	129
Appointment	51	129
Qualifications	51	129
Office of Director		
Abolished	51	129
Created	51	129
FISCAL NOTES:		
Resolution amending House Rule 95a, relating to fiscal notes		557

	Ch.	Page
GARNISHMENT:		
Employment		
Private		
Salaries		
Suggestee execution against		
Application for, by judgment creditor	52	131
Issuance	52	130
Regarded as lien and continuing levy upon		
salary or wages due	52	130
Money from State, agency or political subdivision		
Suggestee execution against	52	131
Application for, by judgment creditor	52	131
Issuance	52	131
Multiple		
Order of priority for satisfaction	52	132
Determination	52	132
Regarded as lien and continuing levy upon sums due	52	131
GOVERNMENTAL ENTITIES:		
Termination		
See Sunset Law.		
HANDICAPPED CHILDREN:		
Birth		
Report of, by physician, midwife, etc.	53	134
Confidentiality	53	135
Board of Physicians		
Members		
Additional	53	134
Appointment	53	133
Payment of expenses	53	134
Terms of office	53	134
Delineation	53	134
Vacancy	53	134
Powers and duties	53	134
Services		
Assistance by other state agencies	53	135
Children to whom applicable	53	133
Continuation and development	53	133
Treatment		
Payment of cost	53	135
HEALTH:		
Controlled Substances Therapeutic Research Program		
Cancer and glaucoma		
Treatment by use of marihuana	56	140
Definitions	56	140
Established	56	140
Limitation on use	56	140
Marihuana		
Contract for receipt	56	141
Transfer for distribution	56	141
Patient Qualification Review Board		
Appointment	56	140
Compensation	56	141
Composition	56	141
Duties	56	141
Promulgation of rules and regulations	56	140
Report to Governor and Legislature on effectiveness	56	142

HEALTH—(continued):	Ch.	Page
Diseases		
Vaccine preventives		
Distribution by state director, county and municipal health officers	55	138
Expanding list	55	138
Health Care Facility Financial Disclosure		
Definitions	57	143
Director of Department of Health		
General powers and duties	57	144
Report to Governor and Chief Clerks of Legislature	57	144
Distribution of identical copy	57	145
Reports required filed with	57	145
Contents	57	145, 146
Form	57	145
Inspection	57	147
Injunction compelling compliance	57	147
Intent of article	57	143
Legislative findings	57	143
Purpose of article	57	143
Reports required	57	145
Contents	57	145, 146
Form	57	145
Penalties for failure to make	57	145, 146, 148
Appeal	57	148
Land		
Single family dwelling units		
Subdivision or development of land for		
Exception as to surface area	54	136
Prohibiting rules restricting	54	136
Subdivision or development		
Rules governing		
Authority of State Health Department	54	136
Marihuana		
Defined	56	140
Use of, for cancer and glaucoma treatment	56	140
See Controlled Substances Therapeutic Research Program within this heading.		
Nursing and personal care homes		
Definitions	82	256
State Board		
General powers and duties	54	136
Subdivision or development of land		
Rules governing	54	136
 HIGHWAYS:		
Resolution urging the Commissioner of Highways to designate a portion of new highway in Monongalia County as the "201st Memorial Way"		559
 HORSE AND DOG RACING:		
Sunday racing		
Continuation or discontinuation	58	151
Ballot	58	151
Local option election	58	149
Ballot	58	150
Notice by county commission	58	149
Petition	58	149
Time limitation	58	150

HOUSE RULES:	Ch.	Page
Resolution amending House Rule 95a, relating to fiscal notes		557
Resolution amending House Rule 8, relating to the appointment of a Speaker Pro Tempore		558
 HOUSING DEVELOPMENT FUND:		
Bonds		
Issuance	59	151
Limitation	59	151
Borrowing		
Authorized limit on	59	151
 INSTITUTIONAL FUNDS:		
See Uniform Management of Institutional Funds Act.		
 INSURANCE:		
Automobile liability policies		
Cancellation or nonrenewal	63	172
Advance notice required	63	173
In existence two consecutive years or longer		
Refusal to renew	63	173
Exception	63	173
Hearing	63	174
Refusal to issue or renew		
Exception	63	173
Bodily injury		
Defined	61	164
Debtor life insurance		
Eligibility	64	175, 176
Increasing amount	64	176
Premium paid by policyholder	64	175
Requirements	64	175
Financial responsibility		
Proof of		
Construed	61	159
Money or securities as	61	163
Insurers, agents, brokers and solicitors		
Domestic or foreign		
Books, papers, documents, etc.		
Examination	62	171
Examination	62	169
Compensation of personnel conducting	62	169
Expenses defined	62	170
Limitation	62	171
Premium tax credit for	62	171
Report	62	170
Copy to insurer	62	170
Prima facie evidence of facts stated in	62	170
Revocation of license upon failure to submit to	62	171
Insurance company defined	62	172
Judgments		
Satisfaction of	61	159
Motor vehicle liability policy		
Defined	61	160
Omnibus clause	61	163
Recovery under endorsement	61	164-168
Scope and provisions	61	160
Uninsured motorists coverage	61	164
Rates charged	61	168

INSURANCE—(continued):	Ch.	Page
Policy or bond		
Requirements	61	158
Uninsured motorists coverage	61	164
Rates charged	61	168
Unlicensed insurers		
Foreign or alien		
Secretary of State		
Service of process	102	359
True and lawful attorney	102	359
 INTERIM LEGISLATIVE COMMITTEE MEETINGS:		
Resolution directing the Committee on Rules, Committee on Finance and Committee on the Judiciary to meet between the regular session of the Legislature held in the year one thousand nine hundred seventy-nine and the regular session of the Legislature to be held in the year one thousand nine hundred eighty		640
 INTERSTATE COMPACT ON AIR POLLUTION:		
Repealed	3	12
 INVESTMENTS:		
Depositories, state		
Accounts		
Statement to Board of Investments by Treasurer	65	181
Reconciliation period	65	182
Treasurer to keep	65	181
Appropriations and Expenditures		
Payment from treasury		
Form of checks	65	185
Manner	65	185
Board of Investments		
Definitions	65	186
Interest earning deposits		
Apportionment among state depositories	65	189
Interest rate	65	189
Permissible investment of funds	65	187
Sole agency of investments	65	189
Exceptions	65	190
Demand deposit accounts		
Defined	65	178
Designation of, by State Board of Investments	65	178
Disbursement accounts		
Defined	65	179
Selection of depositories for	65	179
Funds		
Certain funds to be treated as general revenue	65	183
Deposit by Treasurer	65	185
Receipt by depository	65	185
Exceptions	65	183
Payment into Treasury	65	184
Manner	65	184
Transfer by Treasurer to banks outside the State	65	182
When Treasurer may make available to Board of Investments	65	182
Interest earning deposits		
Apportionment by Board of Investments	65	180
Limitations	65	181
Loan to deposit ratio requirement	65	181
Selection of depository for	65	180

INVESTMENTS—(continued):	Ch.	Page
Investment accounts		
Defined	65	179
Promulgation of rules and regulations by State Board	65	179
Loan to deposit ratio requirement	65	178
Receipt accounts		
Defined	65	178
Promulgation of rules and regulations by State Board	65	179
JEFFERSON COUNTY:		
Shepherdstown Day Care, Inc.		
Board of Education		
Transfer of board owned land	122	545
JOINT COMMITTEE ON GOVERNMENT AND FINANCE:		
Resolution directing the continuation of certain studies by		550
Resolution directing studies of certain programs and problems		552
JOINT COMMITTEE ON GOVERNMENT OPERATIONS:		
See Sunset Law.		
JOINT RULES:		
Resolution amending Joint Rules of the House and Senate, relating to legislation dealing with public pensions and retirement		547
JUDGES AND JUSTICES:		
See Courts.		
JUDICIAL CIRCUITS:		
See Courts.		
JUVENILE OFFENDER REHABILITATION ACT:		
Definitions	14	27
Juvenile delinquency		
Prevention and treatment		
Programs and services established	14	29
Juvenile offenders		
Custody		
Enforcement	14	32
Rehabilitation program established	14	30
Noncustodial counseling		
Individualized program for	14	30
Private agencies		
Agreements with, to effectuate purpose of article	14	30
Programs and services		
Annual reports to Governor, Legislature and Supreme Court	14	32
Cataloguing	14	33
Purpose and intent	14	27
LEGISLATURE:		
Bills and resolutions		
Permitting members and members-elect to prefile	67	194
Time limitation	67	194
Prefiling		
Clerk of House or Senate to accept	67	194
Members and members-elect granted option of	67	194
Number of copies required	67	195
Tentative referral to committee by Clerk	67	195
Time limitation	67	195
Withdrawal following, prohibited	67	195
Rules of respective houses to govern	67	196

LEGISLATURE--(continued):	Ch.	Page
Committees and subcommittees		
Authorized to meet between regular sessions	66	191
Designation and membership by presiding officers	66	191
Joint standing committee, select or subcommittee		
Appointment	66	192
Composition	66	192
Members		
Travel and expense reimbursement	66	191
Authorization of Rules Committee prerequisite	66	191
Rules of procedure	66	191
Staff	66	192
Compensation		
Basic compensation for services	68	196
Proration	68	197
Commission on Interstate Cooperation		
Interim compensation for members of	68	199
Death, resignation or removal of member	68	197
Successor	68	197
Extraordinary sessions		
Additional compensation of members	68	197
Joint Committee on Government and Finance		
Interim compensation for members of	68	199
Majority and minority leaders, additional compensation	68	198
President of Senate and Speaker of House		
Additional compensation	68	198
Expenses		
Affidavits required		
Approval of vouchers by legislative auditor	68	203
Interim expenses	68	201
Out of state expenses	68	202
Reimbursement of expenses incurred during any session	68	200
Travel expenses	68	199
Expenses within Charleston not reimbursable	68	203
Joint Committee on Government and Finance		
Interim powers and duties	66	193
 LIQUEFACTION:		
Resolution urging the Congress of the United States and the President of the United States to designate West Virginia as the site of the proposed experimental coal liquefaction plant		639
 LIS PENDENS:		
Limitations on notice of	1	1
 MARIHUANA:		
Use of, for cancer and glaucoma treatment	56	140
See Health.		
 MENTALLY ILL PERSONS:		
Commitment of persons charged or convicted of a crime		
Hearing on competency to stand trial	69	220
Findings	69	221, 222
Computation of time	69	206
Definitions	69	205

MENTALLY ILL PERSONS—(continued):	Ch.	Page
Involuntary hospitalization in mental health facility		
Admission		
Application		
When to be made	69	208
Notice requirements	69	210
Commitment proceedings, final		
Commencement	69	212
Application	69	212
Certificate of physician or psychologist	69	213
Affidavit in lieu	69	213
Contents	69	213
Contents	69	212
Inspection	69	213
When not to be filed	69	213
Counsel representing individual		
Duties	69	216
Notice of hearing	69	215
Payment of fees	69	216
Dismissal of proceedings	69	218
Examination of individual by court-appointed physician or psychologist	69	214
Custody	69	215
Fees, payment by state	69	220
Hearing	69	213
Additional	69	218
Competency to stand trial of persons charged or convicted of a crime	69	220
Conduct	69	216
Evidence, receipt of	69	216
Fees paid by county commission or state	69	220
Findings by the court	69	217
Notice requirements	69	213, 214, 215
Orders issued pursuant to hearing	69	217
Entry	69	217
Expiration of indeterminate order	69	218
Record of hearing	69	216
Rights of individual	69	215
Time within which notice to be served	69	214
Hospitalization		
Custody to individual in lieu of	69	219
Immediate notification of order to clerk of circuit court of county of individual's residence	69	218
Nonresident person	69	219
Order of	69	219
Execution	69	219
Report to Director of Health	69	220
Transcript of evidence to clerk of circuit court of county of individual's residence	69	219
Conclusion of proceedings		
Time limitation	69	211
Examination		
Admission for	69	209
Certification of physician or psychologist required	69	209
Findings and conclusions required for certification	69	210
Period of validity of certification	69	210
Time limitation	69	210, 211
Mental hygiene commissioner		
Appointment	69	206
Duties	69	206

	Ch.	Page
MENTALLY ILL PERSONS—(continued):		
Involuntary hospitalization in mental health facility—(continued):		
Prosecuting attorney		
Attorney to act instead		
Appointment	69	207
Certification by circuit court of performance	69	208
Duties	69	207
Sheriff		
Duties	69	207
Mental hygiene fund		
Established	69	220
Fees paid from	69	220
MINES AND MINERALS:		
Board of Coal Mine Health and Safety		
Compensation and expenses of board members	72	235
Director of Department of Mines		
Assistance to small coal operators	70	224, 228
Powers and duties generally	70	226
Director of Department of Natural Resources		
Assistance to small coal operators	70	224, 225, 228
Regulation of surface mining and reclamation		
Authority granted for	71	231
Reclamation Commission		
Regulation of surface mining and reclamation	71	231
State program to be developed by commission		
and Director of Department of Mines	71	232
Approval by Secretary of U. S. Department of Interior	71	234
Procedure upon amendment of federal standards	71	235
Reports of standards in existing law which		
are more stringent than federal standards		
by Director of Department of Mines	71	232
Standards not to be more stringent than federal		
standards	71	232
Submission of state program to federal office		
of surface mining and to Joint Committee		
on Government and Finance	71	232, 233
Report of recommendations to Legislature by		
joint committee	71	234
Resolution expressing concern about the regulatory		
program of the Federal Office of Surface Mining		
and Control under the Surface Mining Control and		
Reclamation Act of 1977		547
Surface mining and reclamation		
Department of Natural Resources		
Enforcement of provisions by director	70	224
Jurisdiction vested in	70	223
Legislative findings	70, 71	223, 224, 230
Persons prohibited from engaging in	70	225
Penalties for violations by	70	225
Small coal operators		
Assistance to, by directors of Department of		
Mines and Department of Natural Resources	70	224, 225, 228
Promulgation of rules and regulations identifying		
scope and extent	70	225
Defined	70	225
MINORS:		
Filming sexual conduct of		
See Crimes and Offenses.		

	Ch.	Page
MOBILE HOMES:		
Safety standards		
Adoption of standards by Department of Labor	73	237
Smoke detection systems		
Installation applicable only to dealers in state	73	238
Penalty for failure of dealers to install recoverable by purchaser	73	238
Required	73	237
Sale, rental or transfer		
Penalties for violations of safety standards	73	238
Unlawful when in noncompliance with safety standards	73	238
MOTION PICTURES:		
Motion Picture Fair Competition Act		
Bidding		
Blind bidding prohibited	74	241
Invitation to bid	74	241
Contents	74	242
Procedures	74	242
Definitions	74	240
Exception to provisions of article	74	241
Purpose	74	239
MOTORBOATS:		
Assessment	75	247
Limitation on amount	75	248
Certificates of number		
Dealers		
Application for	75	248
Fee	75	248
Use	75	248
Period of validity	75	246
Temporary	75	245
Expiration	75	246
Definitions	75	244
Identification numbers		
Application	75	245
Display	75	245
Fee	75	245
Issuance	75	245
MOTOR VEHICLES:		
Dealers or manufacturers		
Acts prohibited	101	350
Successor dealers		
Refusal to accept prohibited	101	351
Equipment		
Lights		
Emergency flashing warning lights		
Amber lights restricted to tow trucks and wreckers	77	251
Blue lights restricted to police vehicles	77	251
Red lights restricted to ambulances, fire trucks, school buses, etc.	77	251
Exception as to police vehicles	77	250
Lighting equipment restrictions	77	250
Gross weight		
Included on registration card	76	249
Registration		
Gross weight included on card	76	249
Suspension or revocation		
Issuance or renewal following Proof of financial responsibility required	78	253

	Ch.	Page
MUNICIPAL BOND COMMISSION:		
Bonds		
Levy		
Determination of required	12	23
Statement to political subdivisions	12	23
Payment of taxes on		
Application	12	22
Funds		
Additional		
Withdrawal	12	22
Not to create deficit in issuer's account	12	22
Deposit	12	21
Insufficient	12	22
Notice to issuer	12	22
MUNICIPALITIES:		
Employees retirement and benefit fund		
Empowering Class III cities to establish and maintain	79	254
Planning commissions		
Quorum		
Defined	80	255
Required in order to conduct business	80	255
NARCOTICS:		
See Controlled Substances.		
NATURAL RESOURCES:		
Water purity and quality standards		
State policy regarding	81	256
NEGLIGENT HOMICIDE:		
Penalties	114	417
NURSING AND PERSONAL CARE HOMES:		
Definitions	82	256
NUTRITION PROGRAMS:		
County commissions		
Authorized to make grants for, from general revenue	23	65
OIL AND GAS:		
Definitions	83	259-262
Leases		
Actions to enforce prohibited following demand for payment	84	266
Cancellation for nonpayment of delay rental	84	265
Office of Oil and Gas		
Administrator	83	262
Eligibility	83	264
Powers and duties	83	262
Created	83	262
Records of office open to public	83	264
OPEN GOVERNMENTAL PROCEEDINGS:		
Actions in violation of article voidable	85	269
Bond issues		
Voidability	85	269
Enforcement of article		
Injunction	85	269
Petition	85	269

PARKS AND RECREATION:

Commissaries, restaurants and recreational facilities

Contracts		
Duration	86	270
Renewal	86	270
Termination by director	86	270
Notice to operator	86	270

PEER REVIEW AND PROFESSIONAL STANDARDS COMMITTEES:

See Professions and Occupations.

PENSIONS AND RETIREMENT:

Resolution amending Joint Rules of the House and Senate, relating to legislation dealing with public pensions and retirement		547
--	--	-----

PHYSICIANS AND SURGEONS:

See Professions and Occupations.

PLANNING COMMISSION:

See Municipalities.

POLLUTION:

See Air Pollution Control.

Water

See Natural Resources.

PROBATION AND PAROLE:

Board of Parole

Examination of prisoners' records	87	274
Powers and duties	87	272

Parole

Eligibility	87	272
Procedure for granting	87	273

Probation

Eligibility	87	271
Ineligibility	87	271
Firearm		
Defined	87	272
Use of, in committing a felony	87	272

PROFESSIONS AND OCCUPATIONS:

Accounting corporations

Certificate of incorporation	90	281
Application	90	281
Fee	90	281
Organization of	90	280

Stock

Issuance	90	281
Sale or transfer	90	281

Architects

Liability	91	283
Practice of architecture		
Partnerships, corporations and other business entities permitted to engage in	91	282

Chiropractors

License		
Application	92	283
Qualifications of applicant	92	283, 284

Peer review and professional standards committees

Liability limitation of members	88	276
---------------------------------------	----	-----

PROFESSIONS AND OCCUPATIONS—(continued):	Ch.	Page
Physicians and surgeons		
License	89	277
Fee to accompany application	89	279
Temporary permits	89	278
Eligibility	89	278
Expiration	89	278
Who permitted to practice medicine or surgery in this State	89	277
Sanitarians and sanitarians-in-training		
Board of registration		
Created	93	286
Members	93	289
Appointment	93	290
Compensation	93	290
Terms of office	93	290
Organization	93	290
Register of applications	93	291
Contents	93	291
Register of sanitarians and sanitarians-in-training	93	291
Definitions	93	286
Registration		
Application	93	291
Examination	93	288
Fee	93	291
Qualifications	93	287, 288
Reciprocity	93	292
Renewal	93	291
Required	93	288
Suspension or revocation	93	292
Violation of article	93	293
Penalties	93	293
 PUBLIC EMPLOYEES RETIREMENT:		
Reemployment compensation		
Increasing amount a retirant may receive and continue to draw annuity	94	294
Resolution amending Joint Rules of the House and Senate, relating to legislation dealing with public pensions and retirement ...		547
 PUBLIC LAND CORPORATION:		
Washington-Carver Camp		
Transfer of portions	95	296
 PUBLIC SAFETY:		
Appeals Board		
Convening to hear and determine appeals	97	301
Hearings	97	303
Appeal of decision to Kanawha County Circuit Court	97	304
Counsel	97	303
Members	97	302
Number	97	302
Reimbursement of expenses	97	302
Relief of assignment	97	302
Proceedings	97	303
Quorum	97	302
Subpoenas	97	303
Refusal to answer	97	303

PUBLIC SAFETY—(continued):	Ch.	Page
Members of department		
Annual salaries	96	298
Excluded from provisions of wage and hour law	96	300
Leave time for duty in National Guard or reserves	96	301
Supplemental pay in lieu of overtime	96	300
Superintendent and civilian employees ineligible	96	300
 PUBLIC SERVICE COMMISSION:		
Abandonment of service by utilities and railroads		
Application for permit	98	336
Accounts to be kept by utilities, public service districts and municipally owned utilities		
Establishment of system by commission	98	332, 333
Automatic adjustment clause		
Prohibited	98	335
Certificate of public convenience and necessity		
Abandonment of service		
Application for permit	98	336
Application	98	333
Requirements for	98	333, 334
Commission		
Chairman		
Additional compensation	98	315
Appointment by Governor	98	314
Composition	98	314
Employees		
Appointment	98	314
Secretary		
Duties	98	316
Hearing commissioner, examiner or panel	98	319
Decision or recommended order	98	319
Legal counsel	98	318
Compensation	98	318
Office location	98	317
Orders		
Review of final	98	336
Petition	98	336
Records		
Fees for certification	98	317
Disposition	98	317
Rules of procedure	98	317
Seal	98	316
Inscription on, use of and judicial notice	98	318
Secretary, duties	98	316
Commissioners		
Appointment	98	314
Compensation	98	315
Funds from which paid	98	315
Disqualification	98	314, 315
Qualifications	98	314
Reappointment	98	314
Removal from office	98	314
Terms of office	98	314
Definitions	98	313
Emergency telephone system		
See Emergency Telephone System.		
Employees		
Disqualification	98	314, 315

PUBLIC SERVICE COMMISSION--(continued):	Ch.	Page
Federal acts		
Enforcement by commission	98	334
Fuel adjustment clause		
Prohibited	98	335
Gas pipeline safety		
Employees to effectuate provisions of chapter		
Appointment and duties	98	343
License fee required of pipeline companies	98	344
Amount	98	344
Deposited in Public Service Commission Gas Pipeline		
Safety Fund	98	344
Penalties for violations	98	343
Jurisdiction	98	310, 320
Waiver	98	321
Legislative purpose and policy	98	308
License fee required of public utilities		
Amount	98	335, 336
Deposited in Public Service Commission Fund	98	335
Method of levy	98	335
Management summary report		
Contents	98	309
Presented to Joint Committee on Government and Finance	98	309
Orders of commission		
Review of final	98	336
Petition	98	336
Public Service Commission Fund		
Established	98	335
Special license fee of public utilities deposited in	98	335, 336
Disposition	98	336
Public Service Commission Gas Pipeline Safety Fund		
Established	98	344
Special license fee required of pipeline companies		
to be deposited in	98	344
Rates		
General powers and duties with respect to	98	322
General rate case		
Advance notice of filing required	98	322
Municipally operated public utilities		
Procedure for changing rates	98	329
Procedure for changing	98	322, 325
Receiver		
Compensation determined by court	98	331
Order attaching assets and placing utility under control of	98	331
Regulations, practices and services regarded unreasonable		
Orders to cease	98	331
Reorganization		
Plan to be submitted to Legislature	98	311
Adoption by commission as rule of commission	98	312
Certified copies to be filed with Chief Clerks		
of Legislature, Governor and Secretary of State	98	312
Receipt of Clerks and Governor to be filed		
with Secretary of State	98	312
Report by Clerks to respective houses and referral thereof		
by presiding officers to standing committees	98	312
Effective date	98	312, 313
Incorporation of recommendations of subcommittee		
of Joint Committee on Government and Finance	98	312
Reports to Legislature		
Contents	98	310

PUBLIC SERVICE COMMISSION—(continued):	Ch.	Page
Wrecked or disabled vehicles		
Towing, hauling or carrying		
Assessment against motor carriers for expenses		
of administering chapter	98	340
Computation	98	341, 342
Certificate of convenience and necessity required	98	339
Application	98	339
Hearing	98	339
Notice	98	339
Waiver	98	339
Regulation of business	98	337
 RECKLESS DRIVING:		
Penalties	114	417
 REGULATION OF TRADE:		
Defense of usury		
Corporations, partnerships and limited partnerships		
not entitled to	100	349
Motor vehicle manufacturers or dealers		
Acts prohibited	101	350
Successor dealers		
Refusal to accept prohibited	101	351
Usury laws		
Certain business debts exempt from	100	349
 RESOLUTIONS:		
HCR 8—Resolution amending Joint Rules of the House		
and Senate, relating to legislation dealing with		
public pensions and retirement		547
HCR 9—Resolution expressing concern about the		
regulatory program of the Federal Office of		
Surface Mining and Control under the Surface		
Mining Control and Reclamation Act of 1977		547
HCR 35—Resolution requesting Congress to take necessary steps to		
ensure the enforcement of existing federal statutes prohibiting the		
dumping of foreign steel products in the United States		549
HCR 47—Resolution directing the continuation of certain studies by		
the Joint Committee on Government and Finance		550
HCR 51—Resolution directing studies of certain programs and		
problems by the Joint Committee on Government and Finance		552
SCR 32—Resolution expressing concern and disapproval of the		
Legislature on the planned cutback by the United States Department		
of Transportation of the Amtrak System		554
SCR 33—Resolution urging the Environmental Protection Agency to		
take prompt action to fully protect the rights of West Virginia coal		
producers to sell their coal to utility customers in Ohio		556
HR 7—Resolution amending House Rule 95a, relating to fiscal notes		557
HR 20—Resolution amending House Rule 8, relating to the appointment		
of a Speaker Pro Tempore		558
SR 11—Resolution urging the Commissioner of Highways to designate		
a portion of new highway in Monongalia County as the		
"201st Memorial Way"		559
SCR 1—Resolution urging the Congress of the United States and the		
President of the United States to designate West Virginia as the		
site of the proposed experimental coal liquefaction plant		639

RESOLUTIONS—(continued):	Ch.	Page
HR 6—Resolution directing the Committee on Rules, Committee on Finance and Committee on the Judiciary to meet between the regular session of the Legislature held in the year one thousand nine hundred seventy-nine and the regular session of the Legislature to be held in the year one thousand nine hundred eighty		640
SANTARIANS:		
See Professions and Occupations.		
SCHOOLS:		
Board of Education, County		
Affiliation with state and national associations	36	93
Budget		
Public hearing on	36	92
Notice	36	92
County superintendent		
Location of office	35	90
Meetings	36	91
Agenda	36	91
Special	36	92
Transaction of business		
Quorum defined	36	92
Members		
Compensation	36	92
Limitation	36	92
Teachers		
Transfer	36	92
Notification in writing	36	92
Employees		
Assaults on by pupils	45	111
Disciplinary action for	45	111
Exceptional children		
Removal, temporary	45	114
Special consideration given to	45	113
Expulsion	45	111
Hearing	45	111
Notice	45	112
Contents	45	112
Request for further	45	113
Time limitation	45	113
Rules of procedure governing	45	113
Time	45	111
Penalties for	45	114
Suspension	45	111
Maximum period	45	112
Exception	45	112
Notice of extension	45	112
Contents	45	112
Reinstatement	45	113
Report to county superintendent	45	112
Battery by pupils	45	114
Penalties	45	115
Defined	45	115
Faculty members, probationary		
Defined	41	103
Retention or nonretention	41	102
Appeal	41	103
Decision		
Time within which rendered	41	103
Rules governing conduct	41	103
Notice	41	102

SCHOOLS—(continued):	Ch.	Page
Levies		
Additional		
Limitation on	37	95
Submission by board to voters	37	95
Pay scale		
Increments for principals	42	104
Minimum schedule for auxiliary and service personnel	43	105
Scholarships		
Agencies granting		
Board of Regents authorized to enter into reciprocal agreements with, from other states	39	99
Financial assistance in connection therewith	39	99
Eligibility standards	39	99
Award limitation	39	99
Criteria prohibited	39	99
Payment	39	100
Persons to whom grants made	39	99
Recipient		
Attendance at educational institutions	39	98
Renewal	39	99
Qualifications for	39	99
Return of		
Upon termination of enrollment	39	100
Transferability	39	100
School term		
Employment term for teachers	37	94
Noninstructional days	37	94
Instructional term for pupils	37	94
Cancellation and rescheduling of days within	37	95
Commencement and termination	37	94
Extension by board	37	95
Persons to whom open	37	95
Teachers		
Absence		
Substitute during	44	110
Compensation	44	110
Verification	44	110
Regulations governing	44	109
Assaults by pupils	45	111
Battery by pupils	45	114
Penalties	45	115
Maximum teacher-pupil ratio	38	97
Personal leave		
Accumulation	44	109
Computation	44	108
Transferability	44	109
Use of three days without giving cause	44	109
Limitation	44	109
Notice required	44	109
Exception	44	109
Supplemental salary schedule	37	96
 SECRETARY OF STATE:		
Domestic and foreign corporations		
Payment of license tax	102	355
Highway accidents		
Nonresident operators of motor vehicles		
Appointment of Secretary of State as true and lawful attorney ...	102	365
Definitions	102	366
Service of process	102	365

INDEX

675

	Ch.	Page
SECRETARY OF STATE--(continued):		
Nonresident employers		
Service of process on	102	354
True and lawful attorney for	102	354
Nonresident persons having certain contacts with this State		
Appointment of Secretary of State as true and lawful attorney	102	368
Service of process	102	368
Definitions	102	370
Nonresidents involved in consumer transactions		
Attorney-in-fact	102	363
Service of process on	102	363
Security trusts		
Trustees		
Copy of process or notice to be sent by Secretary of State	102	363
Unlicensed insurers		
Service of process	102	359
True and lawful attorney	102	359
SECURITY TRUSTS:		
Trustees		
Secretary of State to send copy of process or notice	102	363
SHEPHERDSTOWN DAY CARE, INC.		
Jefferson county board of education		
Transfer of board owned land by	122	545
SOUTHERN STATES ENERGY COMPACT:		
Board		
Advisory committees		
Establishment	103	376
Agreements		
Supplementary	103	378
Amendments		
Effective date	103	381
Budget		
Submission to executive head of party states	103	375
Bylaws, rules and regulations	103	374
Composition	103	373
Created	103	373
Donations to	103	374
Executive director	103	373
Duties	103	373
Facilities for transaction of business	103	374
Finances generally	103	375
Members		
Appointment	103	373, 381
Assistant designated by	103	373
Duties	103	381
Officers	103	373
Personnel	103	374
Powers	103	376
Report to Governor of each party state	103	375
Representation of federal government	103	373
Retirement system	103	374
Seal	103	373
Budget		
Submission by board	103	375
Construction of	103	381
Limitation on	103	399

SOUTHERN STATES ENERGY COMPACT—(continued):	Ch.	Page
Definitions	103	372
Enactment	103	372
Finances generally	103	375
Party states		
Eligibility	103	380
Enumeration	103	380
Withdrawal	103	380
Policy and purpose	103	372
Severability	103	380
Withdrawal from	103	380
 SPEAKER PRO TEMPORE:		
Resolution amending House Rule 8, relating to the appointment of a Speaker Pro Tempore		558
 STEEL PRODUCTS:		
Resolution requesting Congress to take necessary steps to ensure the enforcement of existing federal statutes prohibiting the dumping of foreign steel products in the United States		549
 SUNSET LAW:		
Definitions	104	384
Governmental entities		
Bill for continuation	104	390
Creation of new, by Legislature		
Article not to be construed as limiting	104	391
Performance and fiscal audits	104	388
Matters of consideration	104	388
Termination	104	384
Continuance following	104	385, 386
Time limitation	104	386
Dates	104	385
Enumeration	104	385
Immediate	104	392
Reestablishment following	104	386
Joint Committee on Government Operations		
Composition	104	386
Created	104	386
Duties	104	388
Meetings	104	387
Members		
Appointment	104	386
Compensation	104	386
Conflict of interest statement	104	386
Performance and fiscal audits	104	388
Matters of consideration	104	388
Recommendations	104	390
Reports to Legislature	104	390
Legislative findings	104	383
Short title	104	383
 SUPREME COURT OF APPEALS:		
See Courts.		
 SURFACE MINING AND RECLAMATION:		
See Mines and Minerals.		

INDEX

677

	Ch.	Page
TAXATION:		
Assessments		
Increased		
Notice required	105	393
Exception	105	393
Method of serving	105	394
Relief		
Failure to apply for	105	395
Review and equalization by county commission	105	394
Landbooks		
Form of	106	396
Buildings		
Assessment separately from land	106	397
Improvements to, included in assessment	106	397
New buildings		
Manner of assessment	106	397
Omission from landbooks for previous years		
Manner of assessment	106	397
Consumers sales and service tax		
Annual return	109	408
Due date	109	408
Extension of time	109	409
Payment	109	409
Supporting schedule for consolidated return	109	409
Consolidated return	109	409
Exemptions	108	401
Food intended for human consumption		
Defined	108	404
Exemption	108	403
Corporation net income tax		
Meaning of terms	112	412
Food intended for human consumption		
Defined	108	404
Exemption from consumers sales and service tax	108	403
Reduction of tax on	108	403
Land		
Assessment by acre	106	397
Exception	106	397
Assessment separately from buildings	106	397
Erroneously assessed or nonexistent		
Refund to purchaser of payment made	113	414
Mobile homes located on land not owned by mobile homeowner		
Assessment as Class II property	106	397
Assessment a Class III or Class IV property	106	398
Personal income tax		
Meaning of terms	111	411
Soft drinks tax		
Reports		
Additional	110	410
Due date	110	410
Extension of time for filing	110	410
Tax procedure and administration act		
Definitions	107	398
Use tax		
Exemptions	108	407
 TRAFFIC OFFENSES:		
Enforcement of chapter	114	416
Negligent homicide		
Penalties	114	417

TRAFFIC OFFENSES--(continued):	Ch.	Page
Reckless driving		
Penalties	114	417
Words and phrases defined	114	415
 UNEMPLOYMENT COMPENSATION:		
Definitions	115	419-439
Eligibility qualifications	115	439
Employment security special administration fund		
Created	116	446
Nonresident employers		
Secretary of State		
Service of process	102	354
True and lawful attorney	102	354
Total unemployment		
Benefit rate	115	440
Computation	115	441, 444
 UNIFORM ANATOMICAL GIFT ACT:		
Anatomical gifts		
Document declaring	48	118
Designation of surgeon	48	119
Form	48	120
Validity	48	118
Donee	48	118
Absence of specified	48	118
Notice to	48	118
Effective date	48	118
Execution		
Manner	48	118
Body		
Delivery of	48	119
Disposal of	48	119
Eyes		
Removal	48	119
Designation of surgeon, physician or technician	48	119
Absence of	48	119
Enucleation by funeral director or embalmer	48	119
Immunity from civil or criminal liability	48	120
 UNIFORM COMMERCIAL CODE:		
Definitions, general	116	450
Draft or demand for payment		
Issuer's duty and privilege to honor	116	457
Right of issuer to reimbursement	116	458
Investment securities		
Adverse claims		
Defined	116	473
Duty of issuer as to	116	495
Discharge	116	495
Exception as to uncertificated securities	116	497
Notice to purchaser	116	474
Agent or bailee		
When not liable for conversion or participation		
in breach of fiduciary duty	116	489
Applicability of law governing	116	465
Bona fide purchaser		
Defined	116	473
Financial intermediary	116	485

UNIFORM COMMERCIAL CODE—(continued):	Ch.	Page
Investment Securities—(continued):		
Broker		
Defined	116	473
Certificated		
Adverse claims		
Duty of issuer as to	116	495
Discharge	116	495
Alteration	116	470
Authenticating trustee		
Effect of signature	116	472
Completion	116	469
Indorsement	116	478
Assurance of genuineness and effectiveness	116	494
Bearer form	116	480
Effect of delivery without	116	478
Effect of, without delivery	116	480
Guaranteeing signature	116	481
Right to compel	116	478
Unauthorized	116	481
Instruction	116	478
Assurance of genuineness and effectiveness	116	494
Guaranteeing signature	116	481
Unauthorized	116	481
Lost, destroyed or stolen		
Failure of owner to notify issuer	116	499
Issuance of new certificated or equivalent uncertificated securities in place of	116	499
Duty of authenticating trustee, transfer agent or registrar	116	500
Negotiable	116	464
Presumptions	116	464
Signature		
Effect of unauthorized	116	469
Guaranteeing	116	481
Transferable	116	465
Action for price	116	465
Warranties on presentment or transfer	116	475
Creditor's rights	116	488
Definitions	116	460
Index	116	462
Exchangeability	116	500
Financial intermediary		
Defined	116	485
Issuer		
Defined	116	466
Responsibility and defenses	116	466
When defenses ineffective	116	468
Restriction on transfer	116	469
Rights and duties with respect to registered owners and registered pledgees	116	470
Lien		
When valid against purchaser	116	463
Originators of instructions		
Warranties	116	476
Overissue		
Defined	116	464
Effect	116	463

UNIFORM COMMERCIAL CODE—(continued):	Ch.	Page
Investment Securities—(continued):		
Purchaser		
Notice of defect in issue or defense of issuer	116	468
Rights acquired by	116	472
Rights to reject or rescind	116	488
Terms of security	116	466
Transfer of security or limited interest		
When occurs	116	483
Transferor, pledgor or pledgee to supply proof of authority	116	488
Sale		
Contract for		
Enforceability	116	490
Security interest		
Chattel paper		
Perfectured by filing	116	515
Perfectured by secured party's taking possession of collateral	116	516
Conflicting security interests		
Priorities among, in same collateral	116	517
Enforceability, attachment, perfection and termination	116	492, 512
Financing statement		
When filed to perfect	116	513
Money or instruments		
Perfectured by secured party's taking possession	116	515
When possession by secured party perfects without filing	116	516
Transfer		
Adverse claims		
Duty of issuer as to	116	495
Discharge	116	495
Duty of issuer to register	116	493
Effected within central depository system	116	490
Fulfillment of duty to	116	486
Liability and nonliability	116	498
Purchaser's right to reject or rescind	116	488
Register		
Duty of issuer	116	493
Transferor, pledgor or pledgee to supply purchaser		
with proof of authority	116	488
When duty to not fulfilled by transferor	116	487
Wrongful		
Action against transferee based upon	116	487
Uncertificated		
Adverse claims		
Duty of issuer as to	116	497
Discharge	116	497
Exception	116	497, 498
Multiple state transactions		
Perfection of security interests in	116	509
Registration of pledge	116	465
Statements or notices of, sent by issuer,		
neither negotiable nor certificated	116	464
Transfer		
Written statement to new owner	116	501
Transferable	116	465
Action for price	116	465
Secured transactions; sales of accounts and chattel paper		
Conflicting security interests		
Priorities among, in same collateral	116	516
Definitions, general	116	509
Index	116	511

INDEX

681

UNIFORM COMMERCIAL CODE—(continued):	Ch.	Page
Secured transactions; and sales of accounts and chattel paper—(continued):		
Instruments, documents and securities		
Protection of purchasers	116	516
Multiple state transactions		
Perfection of security interests in	116	505
Accounts, general intangibles and mobile goods	116	507
Certificate of title	116	506
Chattel paper	116	509
Documents, instruments and ordinary goods	116	505
Minerals	116	509
Uncertificated securities	116	509
Securities or limited interest		
Transfer		
See "Transfer" within "Investment securities."		
When transfer occurs to purchaser	116	483
 UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT:		
Appropriation of appreciation	60	154
Definitions	60	153
Investments		
Authority	60	155
Cy pres doctrine	60	157
Delegation of management	60	155
Release of restrictions on use	60	156
Standard of conduct in making	60	156
Rule of construction	60	154
Application	60	154
Uniformity of application	60	157
 UNIFORM SECURITIES ACT:		
Scope of chapter	102	355
Secretary of State	102	356
Service of process	102	356
True and lawful attorney	102	356
 USURY:		
See Regulation of Trade.		
 VETERANS:		
National cemetery		
Establishment of new or expansion of existing		
Department of Veterans' Affairs		
Acquisition of land by	117	520
State cemetery		
Department of Veterans' Affairs		
Empowered to establish and maintain	117	519
Promulgation of rules and regulations	117	520
Interment	117	520
 VITAL STATISTICS:		
Birth registration		
Certificate		
Copy to county clerk	118	522
District of occurrence of birth		
Filing of certificate	118	521
District of residence of mother		
Filing of certificate	118	521
General requirements	118	522

VITAL STATISTICS—(continued):	Ch.	Page
Death registration		
Certificate of death		
Copy to county clerk	118	524
District of occurrence of death		
Filing of certificate	118	523
District of residence of deceased		
Filing of certificate	118	523
General requirements	118	523
 WAGES:		
Compensation		
County officials and employees		
Direct deposit into financial institutions	118	525
General order by county commission, etc.	119	526
Written request for	119	525
Payment by employers	119	526
Method	119	526, 527
Exception for railroads	119	526
(See Code §21-5-1,2)		
 WASHINGTON-CARVER CAMP:		
Transfer of portions	95	296
 WILLOW ISLAND:		
Governor's Commission on Willow Island		
Article		
Interpretation of	120	534
Composition	120	530
Continued	120	530
Findings, reports and evidence		
Privilege from use as evidence	120	533
Legislative findings	120	529
Meetings		
Authority to hold executive sessions	120	532
Members		
Appointment	120	530
Compensation and expenses	120	532
Immunity	120	533
Previously appointed members to continue in office	120	531
Powers and duties	120	531
Purpose and intent of the Legislature	120	530
Reports to Governor and Legislature	120	534
Termination	120	534
 WORKMEN'S COMPENSATION:		
Disability		
Permanent		
Award	121	540
Ineligible claimant		
Refund of overpayment to employer	121	540
Method and time of payments	121	540
Payment of benefits		
Commencement	121	540
Method and time	121	540
Overpayment	121	540
Physical and vocational rehabilitation	121	543
Compensation during	121	543
Notice to employer	121	543
Payment	121	543

WORKMEN'S COMPENSATION—(continued):	Ch.	Page
Disability—(continued):		
Temporary total disability benefits		
Commencement of payment	121	537
Notice by commissioner to employer	121	537
Receipt of report of injury required	121	538
Determination by commissioner	121	537
Ineligible claimant		
Refund of overpayment to employer	121	539
Injury claims		
Determination by commissioner	121	537
Monitoring of	121	541
Review by commissioner	121	541
Medical benefits		
Payment	121	538
Payment directly to claimant	121	539
Time limit on receipt prior to referral for examination	121	542
Wage information		
Commissioner to receive from employer	121	538
Time limit	121	538
Determination of benefit rates	121	538
Disabled Workmen's Relief Fund		
Applicability	121	544
Created	121	543
Injury claims		
Determination by commissioner	121	539
Medical evaluation	121	541
Conclusions of physicians		
Reports to commissioner	121	542
Cessation of benefits	121	542
Referral by commissioner for	121	542
Receipt of benefits preceding		
Time limit	121	542
Monitoring of	121	541
Review by commissioner	121	541
Exception	121	542